No. 4023

United States

Circuit Court of Appeals

For the Ninth Circuit.

JOSEPH FREDERICKS and CLARENCE CHAMBERS,

Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

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Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Counsel.

CARKEEK, McDONALD, HARRIS & CORYELL, Attorneys for Plaintiffs in Error,
1164 Empire Building, Seattle, Washington.

THOMAS P. REVELLE, Esq., United States Attorney, Attorney for Defendant in Error,
310 Federal Building, Seattle, Washington.

DE WOLFE EMORY, Esq., Assistant United States Attorney, Attorney for Defendant in Error,
310 Federal Building, Seattle, Washington. [1*]

United States District Court, Western District of Washington, Northern Division.

May, 1922, Term.

No. 7153.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOSEPH FREDERICKS, *alias* JOSEPH WATSON, and CLARENCE CHAMBERS,
Defendants.

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*Page-number appearing at foot of page of original certified Transcript of Record.

Indictment.

Vio. Sec. 37, Penal Code, and Act of Oct. 28, 1919, National Prohibition Act.

United States of America,
Western District of Washington,
Northern Division,—ss.

The grand jurors of the United States of America, being duly selected, impaneled, sworn and charged to inquire within and for the Northern Division of the Western District of Washington, upon their oaths present:

COUNT I.

That Joseph Fredericks, *alias* Joseph Watson, and Clarence Chambers, and each of them, on the fourth day of October, in the year of our Lord one thousand nine hundred and twenty-two, at the town of Stanwood, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, then and there being, did then and there knowingly, wilfully, unlawfully and feloniously combine, conspire, confederate and agree together, and one with the other, and together with divers other persons to the grand jurors unknown, to commit certain offenses against the United States, that is to say, to violate the provisions of the National Prohibition Act, it being then and there the plan, purpose and object of said conspiracy and the object of said persons so conspiring together as aforesaid [2] and hereinafter referred as the conspirators, to knowingly, wilfully

and unlawfully import, possess and transport intoxicating liquors, to wit, whiskey, gin and diverse other liquors containing more than one-half of one per centum of alcohol by volume and fit for use for beverage purposes, a more particular description of the amount and kind whereof being to the grand jurors unknown, such importation, possession and transportation being intended by them, the said conspirators, for the purpose of violating the National Prohibition Act by selling, bartering, exchanging, giving away, furnishing and otherwise disposing of in violation of the National Prohibition Act the said intoxicating liquors, such importation, possession and transportation of said intoxicating liquors by them, the said conspirators, as aforesaid, being unlawful and prohibited by the said Act of Congress.

That said conspiracy was and is a continuing conspiracy from, to wit, the 4th day of October, 1922, to the time of the presentment of this indictment.

OVERT ACTS.

And the grand jurors aforesaid, upon their oaths, aforesaid, do further present, that after the formation of said conspiracy and in pursuance thereof, and in order to effect the object of said conspiracy, the said conspirators, Joseph Fredericks, *alias* Joseph Watson, and Clarence Chambers, and each of them, from a foreign country, to wit, British Columbia, in the Dominion of Canada, on or about the 4th day of October, 1922, did wilfully, knowingly, and unlawfully carry and transport in and on a cer-

tain gas boat known as the "Dragon," to a place near Stanwood, Washington, in said district and division, certain intoxicating liquors, to wit, two thousand six hundred and twenty-eight (2,628) bottles each containing one-fifth (1/5) of a gallon of a certain liquor known as whiskey, and ninety-two (92) bottles each containing [3] one-fifth (1/5) of a gallon of a certain liquor known as gin (the exact quantity of each of said liquors being to the grand jurors unknown), and all of said liquors then and there containing more than one-half of one per centum of alcohol by volume and fit for use for beverage purposes, a more particular description of the amount and kind whereof being to the grand jurors unknown, intended then and there by the said conspirators for use in violating the National Prohibition Act, for the purpose of selling, bartering, exchanging, giving away, furnishing and otherwise disposing of said liquors in violation of the National Prohibition Act, and which said importation, possession and transportation of said intoxicating liquors by the said conspirators, as aforesaid, was then and there unlawful and prohibited by the National Prohibition Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT II.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That Joseph Fredericks, *alias* Joseph Watson, and Clarence Chambers, and each of them on the

fourth day of October, in the year of our Lord one thousand nine hundred and twenty-two, at the town of Stanwood, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, then and there being, did then and there knowingly, wilfully and unlawfully import and bring into the United States from a foreign country, to wit, British Columbia, in the Dominion of Canada, certain intoxicating liquor, to wit, two thousand six hundred and twenty-eight (2,628) bottles each containing one-fifth (1/5) of a gallon of a certain liquor known as whiskey, and ninety-two (92) bottles each containing one-fifth (1/5) of a gallon of a certain [4] liquor known as gin, then and there containing more than one-half of one per centum of alcohol by volume and then and there fit for use for beverage purposes, a more particular description of the amount and kind whereof being to the grand jurors unknown, and which said importing by said Joseph Fredericks, *alias* Joseph Watson, and Clarence Chambers, as aforesaid, was then and there unlawful and prohibited by the Act of Congress passed October 28, 1919, known as the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT III.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That Joseph Fredericks, *alias* Joseph Watson, and Clarence Chambers, and each of them, on the

fourth day of October, in the year of our Lord one thousand nine hundred and twenty-two, at the town of Stanwood, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, then and there being, did then and there knowingly, wilfully and unlawfully have and possess certain intoxicating liquor, to wit, two thousand six hundred and twenty-eight (2,628) bottles each containing (1/5) of a gallon of a certain liquor known as whiskey, and ninety-two (92) bottles each containing one-fifth (1/5) of a gallon of a certain liquor known as gin, then and there containing more than one-half of one per centum of alcohol by volume and then and there fit for use for beverage purposes, a more particular description of the amount and kind whereof being to the grand jurors unknown, intended then and there by the said Joseph Fredericks, *alias* Joseph Watson, and Clarence Chambers for use in violating the Act of Congress passed October 28, 1919, known as the National Prohibition Act, by selling, bartering, exchanging, [5] giving away and furnishing the said intoxicating liquor, which said possession of the said intoxicating liquor by the said Joseph Fredericks, *alias* Joseph Watson, and Clarence Chambers, as aforesaid, was then and there unlawful and prohibited by the Act of Congress known as the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT IV.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That Joseph Fredericks, *alias* Joseph Watson, and Clarence Chambers, and each of them, on the fourth day of October, in the year of our Lord one thousand nine hundred and twenty-two, at the town of Stanwood, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, then and there being, did then and there knowingly, wilfully and unlawfully transport in a certain vehicle then and there in charge of the said Joseph Fredericks, *alias* Joseph Watson, and Clarence Chambers, to wit, a certain gas screw boat known as the "Dragon," length 49.8 feet, beam 8.2 feet, sharp head and sharp stern, Alco four-cylinder engine No. 36, net tonnage 8 tons, certain intoxicating liquor, to wit, two thousand six hundred and twenty-eight (2,628) bottles each containing one-fifth (1/5) of a gallon of a certain liquor known as whiskey, and ninety-two (92) bottles each containing one-fifth (1/5) of a gallon of a certain liquor known as gin, all of said liquors then and there containing more than one-half of one per centum of alcohol by volume and then and there fit for use for beverage purposes, a more particular description of the amount and kind whereof being to the grand jurors unknown, and which said transporting by the said Joseph Fredericks, *alias* Joseph Watson, and Clarence Chambers, as [6] aforesaid, was then and there unlawful and prohibited by the Act of Con-

gress passed October 28, 1919, known as the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

THOMAS P. REVELLE,
United States Attorney.
CHARLES E. ALLEN,
Assistant United States Attorney.

A true bill.

LEWIS SCHWAGER,
Foreman Grand Jury.

[Indorsed]: Presented to the Court by the Foreman of the Grand Jury in Open Court, in the Presence of the Grand Jury, and Filed in the U. S. District Court, October 26, 1922. F. M. Harshberger, Clerk. [7]

United States District Court, Western District of Washington, Northern Division.

No. *7513.*

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOE FREDERICKS and CLARENCE CHAMBERS,
Defendants.

Arraignment of Each Defendant.

Now on the 30th day of October, 1922, the above defendants come into open court for arraignment accompanied by their attorney D. A. McDonald. Whereupon Defendants say that their true names are Joseph Fredericks and Clarence Chambers respectively and they are allowed one week in which to plead.

Journal #10, page 348. [8]

In the District Court of the United States, for the Western District of Washington, Northern Division.

No. 7153.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOSEPH FREDERICKS, *alias* JOSEPH WATSON, and CLARENCE CHAMBERS,
Defendants.

Motion to Quash Indictment and for Return of Property.

Come now the defendants in the above-entitled cause having heard the said indictment read, say that the Grand Jury by which the said indictment was found and returned into open court found and returned said indictment solely upon incompetent evidence and testimony, to wit, the testimony of

Ashby W. Johnson, Oscar Hanson and William Justy, William Linville and William Griffiths, and the presentation to the Grand Jury of samples of the intoxicating liquor described in said indictment, all of which testimony and evidence was secured by the search and seizure of the gas boat "Dragon" near Stanwood, Washington, on October 4, 1922, without any legal right or authority whatsoever and in violation of the defendants' rights under the constitution of the United States and federal statutes relating to searches and seizures and of the State of Washington; and that no other testimony was heard by said Grand Jury regarding the alleged guilt of said defendants other than the testimony of said witnesses and the evidence and testimony aforesaid was all obtained in violation of the defendants' rights as aforesaid by said illegal and unconstitutional search and seizure.

And the defendants further move that the two hundred thirty-five (235) cases of whiskey and eight (8) cases of gin [9] described in the indictment herein as twenty-six hundred twenty-eight (2,628) bottles each containing one-fifth (1/5) of a gallon of a certain liquor known as whiskey and ninety-two (92) bottles each containing one-fifth (1/5) of a gallon of a certain liquor known as gin, seized on the gas boat "Dragon," the said boat at the time being in the possession of the said Chambers, be returned to the defendants or that in the event that the Court decree that they are not entitled to the return of the same, that an order be entered preventing the plaintiff from introducing

said whiskey and gin in evidence or from introducing any facts learned by the search and seizure of said launch and the said defendants on the said 4th day of October, 1922, and from introducing any of said whiskey and gin in evidence.

This motion is based upon the following grounds:

First. That no proper warrant was ever issued for the arrest or search of said defendants and the said launch.

Second. That no sufficient affidavit was ever made for the issuance of any search-warrant.

Third. No search-warrant was exhibited or read to the defendants or either of them at the time of the search and seizure.

Fourth. No copy of the search-warrant was served on defendants or either of them at the time of the search and seizure.

Fifth. No receipt for the property herein mentioned was given to the defendants or either of them at the time it was taken from them.

Sixth. No proper inventory under oath of the said property taken was made and returned to the United States Commissioner as required by law.

Seventh. No inventory of the property taken was or has been given to the defendants or either of them. [10]

Eighth. That no general warrant of arrest was in the hands of said prohibition agents at the time of the unlawful search and seizure.

Ninth. That the said search and seizure was conducted in the night-time, in that it was after sundown.

Tenth. That no offense was being committed by the defendants in the presence of the Federal officers at the time of said arrest nor was there any visible evidence of the commission of the defendants or either of them of unlawfully having in his or their possession or of unlawfully transporting intoxicating liquor.

These motions are based upon the files and records in this cause and the files and records in the same entitled cause numbered 1789 of the United States Commissioner, as filed in the office of the Clerk of this Court, and upon the affidavits of the defendants and the testimony taken at the preliminary hearing before His Honor R. W. McClelland, Commissioner, Cause No. 1787.

CARKEEK, McDONALD, HARRIS & CORYELL,
Attorneys for Defendants.

Received a copy of the within motion this 1 day of Nov., 1922.

THOS. P. REVELLE,
Attorney for Plaintiff.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 1, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [11]

United States District Court, Western District of Washington, Northern Division.

No. 7153.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOSEPH FREDERICKS, *alias* JOSEPH WATSON, and CLARENCE CHAMBERS,
Defendants.

Demurrer.

Come now the defendants Joseph Fredericks and Clarence Chambers, by Carkeek, McDonald, Harris & Coryell, their attorneys, and say:

That the said indictments and the matters and things therein set forth are, as therein alleged and set forth, not sufficient in law to compel them, the said defendants, to answer thereto, and that the said indictment joins four counts improperly and is duplicitous in that the first count is for conspiracy to violate the Act of October 28, 1919, the second count is for smuggling, both of which are felonies, and the third count is for possession of intoxicating liquors under the Act of October 28, 1919, and the fourth count is for transportation of intoxicating liquors under the Act of October 28, 1919, both of which last counts are misdemeanors. The several counts are not for the same act or transaction nor are they connected together nor are they of the same class of crimes or offenses.

(See U. S. vs. Jones, 69 Fed. 973.
U. S. vs. Scott, 4 Bus. 29.
U. S. vs. Gaston, 28 Fed. 840.
U. S. vs. Cadwallader, 59 Fed. 627.
U. S. vs. Kelsey, 42 Fed. 882). [12]

And further demurring to each count, defendants say that the first count is not sufficient in law to charge a crime in that it does not charge that the said defendants possessed the said liquor for the purpose of selling, bartering, exchanging or giving away, or if not by themselves by what person or persons the said acts were to be done; and the said count is defective for uncertainty in that regard; and that the said Count No. 1 is further defective for uncertainty in that it does not allege positively what any of the so-called liquor was but merely alleges that it was "known" as whiskey and gin.

And further demurring to Count II of said indictment, the said defendants say that Count II is defective for uncertainty in that it does not sufficiently describe what the so-called liquor was but merely charges that it was "known" as whiskey and gin.

And for demurrer to Count III of the indictment, defendants say that the matters alleged and set forth are not sufficient at law to compel them to answer thereto in that said count of said indictment does not charge that the said defendants possessed the liquor for the purpose of selling, bartering, exchanging or giving away or if not by themselves by what person or persons the said acts were to be done, and that said

count is defective for uncertainty in that count and that the said Count III is further defective for uncertainty in that it does not allege positively what any of the so-called liquor was but merely alleges that it was "known" as whiskey and gin.

And for demurrer to Count IV of said indictment, further say that the matters and things alleged and set forth are not sufficient in law to compel them to answer thereto in that said count of said indictment is defective and insufficient in [13] that it does not allege positively what any of the so-called liquor was but merely that it was "known" as whiskey and gin.

WHEREFORE, defendants pray judgment and that they may be discharged of said indictment.

JOSEPH FREDERICKS.
CLARENCE CHAMBERS.
By CARKEEK, McDONALD, HARRIS & CORYELL,
Attorneys for Defendants.

Service accepted this 8th day of Jan. 1923.
DeWOLFE EMORY,
Asst. U. S. Atty.

[Indorsed] Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 8, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [14]

United States District Court, Western District of Washington, Northern Division.

No. 7153.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH FREDERICKS and CLARENCE CHAMBERS,

Defendants.

Plea of Each Defendant.

Now on this 8th day of January, 1923, the above defendants come into open court to plead accompanied by their attorney D. A. McDonald. Each defendant here and now enters his plea of not guilty and they are allowed the privilege to file a demurrer.

Journal No. 10, page 459. [15]

United States District Court, Western District of Washington, Northern Division.

No. 7153.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH FREDERICKS and CLARENCE CHAMBERS,

Defendants.

Trial.

Come now on this 20th day of February, 1923, the said defendants into open court for trial accompanied by their attorneys D. A. McDonald and John F. Dore. De Wolfe Emory is present in behalf of the Government. Whereupon all parties being present a jury is empanelled and sworn as follows: John N. Parker, Herman L. Shape, Charles Stellar, William H. Seifert, John J. High, Harry H. Sisler, G. J. McCormick, Bert B. Griswold, John S. Riely, Harry M. Sampson, William H. Patterson and Harry A. Ross. Opening statement is made to the jury for the Government by De Wolfe Emory. Upon motion of attorney for defendant, it is ordered that all witnesses be excluded from the courtroom except when testifying. Government witness S. C. Linville is sworn and examined. This cause is now continued to February 21, 1923, at 10 A. M.

Journal #11, page 17. [16]

United States District Court, Western District of Washington, Northern Division.

No. 7153.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH FREDERICKS and CLARENCE CHAMBERS,

Defendants.

Trial Resumed.

Now on this 21st day of February, 1923, the above-entitled cause comes on for trial with both defendants present accompanied by their attorneys. Whereupon all parties being present trial in this cause is resumed. Government witnesses are sworn and examined as follows: S. C. Linville (recalled), Walter M. Justi, W. J. Griffith, Oscar W. Hanson, E. O. Mattrand, A. W. Johnson, Leonard Regan and C. W. Kline. Government exhibits numbered 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 are introduced as evidence. Government rests. Defendants now move for a directed verdict of not guilty on count II as to defendant Fredericks and that the Government be required to elect upon which of the other counts of the indictment, it will proceed. Both motions are denied, with exceptions allowed. Statement is made to the jury for the defendants by D. A. McDonald. Defendants' witnesses are sworn and examined as follows: Joseph Fredericks, Clarence Chambers, Jesse Hall, Albert Court, Frank Jackson, Oscar Tjersland, Harry Rock, Henry Whalen and S. Chambers. Defendants' exhibit lettered "A" is introduced as evidence. Defendants rest. John F. Dore, attorney for defendants moves for a directed verdict of not guilty as to both defendants on all counts. Motion is denied with exception allowed. Said cause is now argued to the jury by both sides and jury after being instructed by the court, retires for deliberation. Upon stipulation of attorneys for both sides

and defendants, it is ordered that if verdict is not reached by six o'clock P. M. the jury may bring in a sealed verdict at 10 A. M. on February 23, 1923.

Journal #11, page 18. [17]

United States District Court, Western District of Washington, Northern Division.

No. 7153.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH FREDERICKS and CLARENCE CHAMBERS,

Defendants.

Verdict Returned.

Now on this 23d day of February, 1923, both defendants being present in open court and attorneys for both sides being present and all jurors and all answering to their names, the jury returns a verdict of guilty as to both defendants on counts I, III and IV of the indictment. Verdict reads as follows:

"We, the jury in the above-entitled cause, find the defendant Joseph Fredericks is guilty as charged in Count I of the indictment herein; and further find the defendant Clarence Chambers is guilty as charged in Count I of the indictment herein; and further find the defendant Joseph Fredericks not guilty as charged in Count II of the indictment herein; and further find the defendant Clarence Chambers not guilty, as charged in

Count II of the indictment herein; and further find the defendant Joseph Fredericks is guilty as charged in Count III of the indictment herein; and further find the defendant Clarence Chambers is guilty, as charged in Count III of the indictment herein; and further find the defendant Joseph Fredericks is guilty as charged in Count IV of the indictment herein; and further find the defendant Clarence Chambers is guilty as charged in Count IV of the indictment herein.

JOHN N. PARKER,
Foreman." [18]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 7153.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOSEPH FREDERICKS and CLARENCE CHAMBERS,
Defendants.

Verdict.

We, the jury in the above-entitled cause, find the defendant Joseph Fredericks is guilty, as charged in Count I of the indictment herein; and further find the defendant Clarence Chambers is guilty, as charged in Count I of the indictment herein, and further find the defendant Joseph Fredericks not guilty, as charged in Count II of the indict-

ment herein; and further find the defendant Clarence Chambers not guilty, as charged in Count II of the indictment herein; and further find the defendant Joseph Fredericks is guilty, as charged in Count III of the indictment herein; and further find the defendant Clarence Chambers is guilty, as charged in Count III of the indictment herein; and further find the defendant Joseph Fredericks is guilty, as charged in Count IV of the indictment herein; and further find the defendant Clarence Chambers is guilty, as charged in Count IV of the indictment herein.

JOHN N. PARKER,
Foreman.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Feb. 23, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [19]

United States District Court, Western District of Washington, Northern Division.

No. 7153.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOSEPH FREDERICKS *alias* JOSEPH WATSON, and CLARENCE CHAMBERS,
Defendants.

Motion for New Trial.

Come now the defendants Joseph Fredericks and Clarence Chambers, and each of them, and move the Court to set aside the verdict of the jury herein returned on the 23d day of February, 1923, and grant a new trial for the reason and upon the following grounds:

I.

That said verdict was against and contrary to law.

II.

That said verdict was against and contrary to the evidence.

III.

Insufficiency of the evidence to justify the verdict.

IV.

There was no evidence whatever to support a verdict on the first count.

V.

Errors of law occurring during the trial and excepted to at the time by the said defendants. [20]

VI.

Erroneous instructions given to the jury by the Trial Judge.

VII.

Refusal of the Trial Judge to give instructions requested by the defendants.

VIII.

Variance between the indictment and the proof introduced at the trial.

IX.

Misjoinder of separate and independent offenses.

X.

Misconduct of the jury.

XI.

Separation of the jury after submission of the case to them and before verdict.

XII.

The defendants further say that in the trial of this case, the Court erred in overruling defendants' motion to require the Government to elect whether the defendants should be tried upon Count I or Counts II, III and IV.

XIII.

That matters occurred in said trial prejudicial to the defendants before the jury and prevented them having a fair and impartial trial by the jury in this:—that the Court unduly restricted the right of the defendants to examine the jurors on their *voir dire* as to their qualifications to sit as jurors. That the Trial Court refused defendants the right to ask each juror if accepted on the jury, he would only vote for such verdict as he thought right under the law and evidence and would not be influenced by what the other [21] jurors thought except as they might convince him that his view was incorrect by legitimate argument, to which refusal defendants excepted. The Court erred in permitting the Government to introduce evidence as to firearms on the boat of defendants at the time of their arrest, over objection of defendants, which fact tended to prejudice the defendants before

the jury and cause it to render a verdict as the result of passion and prejudice.

XIV.

The Court erred in overruling defendants' motion to suppress the evidence when renewed at the opening of the Government's case.

XV.

The Court erred in admitting in evidence over the objection of the defendants, the liquor seized at the time of the defendants' arrest, upon the ground that the same was seized in violation of the constitutional rights of the defendants.

XVI.

The Court erred in refusing to permit the defendants to cross-examine the Government's witnesses as to the manner of their arrest and the seizure of the liquor and also to permit the defendants to go into the question of the illegality of said arrest and seizure, which refusal was duly excepted to by defendants at the trial.

XVII.

The Court erred in overruling defendants' motion for a directed verdict as to count I as to each of the defendants at the close of the Government's case, upon the ground that the Government had failed to prove the only overt act alleged in said Count I. [22]

XVIII.

The Court erred in overruling defendants' motion for a directed verdict on Count I as to each of the defendants at the conclusion of the entire case, upon the ground that there was no competent proof

before the jury as to the commission of the only overt act alleged in said Count I.

XIX.

The Court erred in refusing to instruct the jury to return a verdict of not guilty on the first count of said indictment as requested by defendants in writing at the conclusion of all the evidence.

XX.

That the Court should grant each of the defendants a new trial for error in giving the following instruction:

> "In order to establish a conspiracy there must be three things established. One is the conspiring together, the co-operating, the confederating, the conduct of the parties that so interrelate into each other as to preclude a conclusion other than that there was a conspiracy and understanding to do the particular thing that is charged. And then the next is to commit the offense,—the conspiracy to commit in this case the violation of the National Prohibition Act. And then before that is an offense something must be done by one of the parties to carry forward the conspiracy. It is immaterial what that act is. It might be sailing a boat down the stream, or it might be carrying a cargo or the prohibited commodity in a boat. It might be any minor thing. In this case the overt acts charged in the indictment are set forth in that count; and it is not necessary that the Government establish all

of the overt acts charged. It is sufficient that they have proved one act that would carry forward the conspiracy," and that the offense would be complete without bringing in a drop of liquor.

To the giving of which instruction, objection was made and by the Court overruled and to which exception was at the time made in the presence of the jury.

XXI.

The Court should grant each of the defendants a new trial for the refusal of the Court to give the following instruction asked by the defendants and refused by the Court:

"Before you can find that the conspiracy charged in the indictment actually existed, you must find from the evidence [23] that one or more persons were acting in concert or combination with the defendants towards effecting or causing the result of the end claimed in the indictment, that is to violate the provisions of the National Prohibition Act by wilfully and unlawfully importing intoxicating liquors. If the evidence does not satisfactorily prove to you that some person or persons acted in concert with the defendants, that is, were knowingly assisting said defendants or participating with them in the conspiracy charged or in carrying out the same, then you cannot find that a conspiracy existed.

"You will thus see that the existence or participation in the alleged unlawful acts must

be intentional. It follows, therefore, that proof of mere suspicion or bare knowledge that the act is being done by others without such intentional participation in or connection with it, is not sufficient while knowledge of the commission of the unlawful acts may be properly taken into consideration by the jury in connection with any facts or circumstances which may be proven to aid in determining whether or not any other person was connected with the defendants as a participator in or a party to the alleged unlawful acts, if any such acts are proven, yet such mere knowledge by any person, that is knowledge that the defendants or either of them were attempting to violate the National Prohibition Act (if you find the evidence shows he or they were attempting to violate said act) would not make such other person a party to the acts. The proof must go further. Knowledge of the attempt must combine with an intent to violate said National Prohibition Act.

"If either of the defendants knew that the other defendant or any third person, charged thereby by the Grand Jurors as being to them unknown, was doing any act with intent to violate the National Prohibition Act, and having such knowledge aided such defendant in doing such act, if any such were being committed (the intent claimed by the Government herein was to violate the National Prohibition Act by importing liquor) and the other assisting

intended to aid such defendant in carrying out such intent, then I say to you that such defendant or such other person, as the proof may show, being those participating while having such knowledge, becomes and is in law a party to such conspiracy. Of course, if you are not satisfied beyond reasonable doubt that a conspiracy did exist as charged in said indictment, then without further consideration you will return a verdict of not guilty as to the defendants on this count. If you should, however, be satisfied as to the existence of such conspiracy, you must then consider whether or not the overt act charged in said First Count of said indictment has been proved beyond reasonable doubt. Such overt act must be proved as laid in this indictment, that is, that on or about the 4th day of October, 1922, the said defendants Joseph Fredericks and Clarence Chambers, and each of them, from a foreign country, to wit, British Columbia, in the Dominion of Canada, did wilfully, knowingly and unlawfully carry and transport in and on said gas boat known as the 'Dragon' to a place near Stanwood, Washington, the intoxicating liquors described in said indictment for the purpose of selling, bartering, exchanging, giving away, furnishing and otherwise disposing of said liquors in violation of the National Prohibition Act. And unless such overt act is proven as it is charged in the indictment and as I have stated it to you, the crime charged cannot be

found by you to have been proven and you must return a verdict of not guilty as to each of the defendants on said Count I." [24]

And to the refusal to the giving of which instruction, defendants at the time objected and saved their exception in the presence of the jury.

XXII.

The Court should grant each of the defendants a new trial for the refusal of the Court to give the following instruction asked by the defendants and refused by the Court:

"I instruct you that if you should find from the evidence in this case that the defendants received this liquor on board the gas boat 'Dragon' near Deception Pass, in the State of Washington, knowing it to be liquor, they would be guilty of a violation of law, yet you could not convict either one of these defendants upon either the first or second counts in this indictment, because to convict the defendants on the said counts, you must find beyond a reasonable doubt that they brought the liquor into the United States from British Columbia."

And to the refusal to the giving of which instruction, defendants at the time objected and saved their exception in the presence of the jury.

XXIII.

The Court should grant each of the defendants a new trial for each and every one of the objections made to each and every instruction wherein defendants made objection thereto and which were

by the Court overruled, and to which exceptions were at the time made in the presence of the jury.

XXIV.

The Court should grant a new trial for the refusal of the Court to give each and every instruction asked by defendants which was refused by the Court, and for the modification of each instruction asked when instructions asked were modified by the Court, and to the refusal to the giving of each of said instructions or to the modification of each instruction defendants at the time objected and saved their exceptions in the presence of the jury.

JOSEPH FREDERICKS,
CLARENCE CHAMBERS,
Defendants.

CARKEEK, McDONALD, HARRIS & CORYELL,
JOHN F. DORE,
Their Attorneys. [25]

Received copy of the foregoing and service thereof admitted this 2 day of March, 1923.

THOS. P. REVELLE,
U. S. Atty.
F. M. S.,
Attorney for Plaintiff.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Mar. 2, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [26]

United States District Court, Western District of Washington, Northern Division.

No. 7153.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOSEPH FREDERICKS, *alias* JOSEPH WATSON, and CLARENCE CHAMBERS,
Defendants.

Motion in Arrest of Judgment.

Come now Joseph Fredericks and Clarence Chambers, defendants in the above style and numbered cause, and against whom a verdict of guilty was rendered in said cause on the 23d day of February, 1923, upon Counts I, III and IV of the indictment herein and each separately moves the Court to arrest the judgment against him and hold for naught the verdict of guilty rendered against them and each of them for the following reasons:

I.

Because Count I in the bill of indictment in this cause is insufficient to support any judgment against them or either of them in this: the indictment in said Count I seeks to charge them with an unlawful conspiracy to violate a law of the United States. Such indictment is insufficient to charge a conspiracy to violate a law of the United States in that the purpose or object of the conspiracy is not set out with sufficient or proper clearness or

certainty. The indictment charges that the object of the conspiracy was to import, possess and transport intoxicating liquors and does not further describe, declare or set out the object or purpose of the conspiracy. In the said First Count of the indictment, the liquor is not described, the ownership thereof is not alleged, the manner and [27] means of accomplishing the said conspiracy are not set out; no facts are alleged from which it can be determined by an inspection of the indictment, the exact nature and extent of said conspiracy or the means by which it was to be made effectual.

II.

Because it does not appear from the allegations in Count I of said indictment with sufficient clearness or certainty or from the allegation of facts in said indictment that the object or purpose of the alleged conspiracy was to commit an offense against the laws of the United States and that some overt act was committed by one of the alleged conspirators in furtherance of or for the purpose of carrying out the alleged conspiracy.

III.

Because on the trial of this cause, the evidence showed that the discovery of the commission of the crime, if any, committed by the defendants was secured by unlawful search and seizure in violation of the Fourth and Fifth Amendments of the Constitution of the United States, by reason whereof this Court had no jurisdiction to hear and determine the said cause.

IV.

That the evidence introduced was insufficient to sustain the verdict rendered herein.

V.

Variance between the only overt act alleged in Count I and the proof introduced at the time of trial.

VI.

Misjoinder of separate and independent offenses.

VII.

Misconduct of the jury. [28]

VIII.

That the offense of possession charged in Count III of said indictment is comprehended and included in the charge of transportation contained in Count IV of said indictment, and that the Court can only inflict one penalty on the two counts.

IX.

Separation of the jury after submission of the case to them and before verdict.

The defendants, therefore, pray that as to each of them this motion be sustained and that the judgment of conviction against them and each of them be arrested and held for naught, and that they and each of them have all such other relief as may be just or proper in the premises and that they and each of them are ever free.

CARKEEK, McDONALD, HARRIS & CORYELL,

JOHN F. DORE,

Attorneys for Defendants Joseph Fredericks and Clarence Chambers.

Received copy of foregoing and service thereof admitted this 2d day of March, 1923.

THOS. P. REVELLE,
U. S. Atty.
F. M. S.,
Attorney for Plaintiff.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Mar. 2, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [29]

United States District Court, Western District of Washington, Northern Division.

No. 7153.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOSEPH FREDERICKS and CLARENCE CHAMBERS,
Defendants.

Sentence of Joseph Fredericks.

Comes now on this 19th day of March, 1923, the said defendant Joseph Fredericks into open court for sentence, and being informed by the Court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, and he nothing says save as he before hath said. Wherefore,

by reason of the law and the premises, it is considered, ordered and adjudged by the Court that the defendant is guilty of violating Section 37 Penal Code and Act of October 28, 1919, National Prohibition Act, and that he be punished by being imprisoned in the United States Penitentiary at McNeil Island, Pierce County, Washington, or in such other place as may be hereafter provided for the imprisonment of offenders against the laws of the United States for the period of 18 months on Count I of the indictment at hard labor and to pay a fine of $50.00 on Count III and a fine of $50.00 on Count IV of the indictment. And the said defendant Joseph Fredericks is now hereby ordered into the custody of the United States Marshal to carry this sentence into execution.

Judgment and Decree, vol III. [30]

United States District Court, Western District of Washington, Northern Division.

No. 7153.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH FREDERICKS and CLARENCE CHAMBERS,

Defendants.

Sentence of Clarence Chambers.

Comes now on this 19th day of March, 1923, the

said defendant Clarence Chambers into open court for sentence, and being informed by the Court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, and he nothing says save as he before hath said. Wherefore, by reason of the law and the premises, it is considered ordered and adjudged by the Court that the defendant is guilty of violating Section 37 Penal Code and act of October 28, 1919, National Prohibition Act, and that he be punished by being imprisoned in the United States Penitentiary at McNeil Island, Pierce County, Washington, or in such other place as may be hereafter provided for the imprisonment of offenders against the laws of the United States for the period of 18 months on Count I of the indictment at hard labor, and to pay a fine of $50.00 on Count III and a fine of $50.00 on Count IV of the indictment. And the said defendant Joseph Fredericks is now hereby ordered into the custody of the United States Marshal to carry this sentence into execution.

Judgment and Decree, vol. III. [31]

United States District Court, Western District of Washington, Northern Division.

No. 7153.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH FREDERICKS, *alias* JOSEPH WATSON, and CLARENCE CHAMBERS,

Defendants.

Petition for Writ of Error.

AND NOW COME THE ABOVE-NAMED DEFENDANTS, Joseph Fredericks and Clarence Chambers, and by their attorneys respectfully show that on the 23d day of February, 1923, a jury duly impanelled herein found your petitioners guilty on Counts I, III and IV of the indictment herein; that thereafter and on the 2d day of March, A. D. 1923, and, within the time limited by law, under rules and order of this court, the defendants moved for a new trial, which said motion was by the Court overruled, and exception thereto allowed, and likewise, within said time, filed their motion for arrest of judgment, and which was by the Court overruled, and to which an exception was allowed; and thereafter on the 19th day of March, 1923, sentence of the above-entitled court in said cause was passed and final judgment was entered against your petitioners.

Your petitioners herein feeling themselves aggrieved by said verdict and judgment entered thereon as aforesaid and by the orders and rulings of said court, and proceedings in said cause now herewith petition this Court for an order allowing them, and each of them, to prosecute a writ of error from said judgment and sentence to the United States Circuit Court of Appeals for the Ninth Circuit, under the laws of the United [32] States, and in accordance with the procedure of said Court made and provided, to the end that the said proceedings as herein recited, and as more fully set forth in the assignment of errors presented herewith and herein, may be reviewed and the manifest error appearing upon the face of the record of said proceedings, and upon the trial of said cause, may be by said Circuit Court of Appeals corrected, and that for said purpose, a writ of error and citation thereon should issue as by law and ruling of the Court provided.

WHEREFORE, premises considered, your petitioners pray that a writ of error be issued to the end that said proceedings of the District Court of the United States for the Western District of Washington, Northern Division, may be reviewed and corrected, the said errors in said record being herewith assigned and presented herewith, and that pending the final determination of said writ of error by said appellate court, an order may be entered herein that all further proceedings be suspended and stayed, and that pending such final

determination, that said defendants be admitted to bail, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals.

CARKEEK, McDONALD, HARRIS & CORYELL,

JOHN F. DORE,
Attorneys for Defendants.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Mar. 19, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [33]

United States District Court, Western District of Washington, Northern Division.

No. 7153.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOSEPH FREDERICKS, *alias* JOSEPH WATSON, and CLARENCE CHAMBERS,
Defendants.

Order Allowing Writ of Error and Fixing Amount of Bonds.

This 19th day of March, 1923, came the defendants, Joseph Fredericks and Clarence Chambers, and by their attorneys, Carkeek, McDonald, Harris & Coryell and John F. Dore, filed herein and pre-

sented to the Court their petition, praying for the allowance of a writ of error intended to be urged by them, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had as may be proper in the premises; and that an order be made fixing the amount of the supersedeas bond to be furnished by each of the defendants to admit them to bail during the pending of said writ of error and until the final determination thereof by the said Circuit Court of Appeals.

NOW, on consideration of said petition and being fully advised in the premises, the Court does hereby allow the writ of error.

And it is hereby further ordered that pending the final determination of said writ of error by the said Circuit Court of Appeals, defendants be admitted to bail, and that the amounts of the supersedeas bonds to be filed by said defendants be as follows: [34]

Joseph Fredericks: $2,500.00
Clarence Chambers: $2,500.00

And it is further ORDERED that upon any of said defendants filing a good and sufficient bond in the aforesaid sum, he shall be released from custody pending the determination of the writ of error herein assigned.

Done in open court this 19th day of March, 1923.

JEREMIAH NETERER,
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Mar. 19, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [35]

United States District Court, Western District of Washington, Northern Division.

No. 7153.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOSEPH FREDERICKS, *alias* JOSEPH WATSON, and CLARENCE CHAMBERS,
Defendants.

Assignment of Errors.

Come now the above-named defendants, Joseph Fredericks and Clarence Chambers, and in connection with their petition for writ of error in this cause submitted and filed herewith, assign the following errors which the defendants aver and say occurred in the proceedings and at the trial in the above-entitled cause, and in the above-entitled court, and upon which they rely to reverse, set aside and correct the said judgment and sentence entered herein, and say that there is manifest

error appearing upon the face of the record, and in the proceedings in this:

I.

The District Court erred in overruling the motion of defendants to quash the indictment and for the return and suppression of the evidence of the liquor seized at the time of the defendants' arrest, which motion was made prior to the trial and from the showing made thereon it clearly appeared that the search and seizure was made without the proper issuance or execution of any search warrant or pursuant to any lawful arrest of the defendants and was in violation of their rights under the Fourth and Fifth Amendments to the Constitution of the United States. Due and timely exception was taken to the action of the Trial Court in overruling defendants' motion to quash and for the return and [36] suppression of the evidence.

II.

The District Court erred in overruling the demurrer to the indictment on the ground that the four counts are improperly joined therein and it is duplicitous and the several counts are not for the same act or transaction nor are they connected together nor are they of the same class of crimes or offenses.

III.

The District Court erred in overruling the demurrer to Count I of the indictment, in this that it does not charge that the defendants were to possess the said liquor for the purpose of sale, barter

or exchange, or if they were not to do it by what persons the said acts were to be done and was, therefore, defective for uncertainty.

IV.

The District Court erred in overruling defendants' motion for an inspection of the liquor and the right to take samples for analysis prior to the trial.

V.

The District Court erred in overruling defendants' motion for a bill of particulars requiring the Government to set out a description of the labels and other letters on said liquor.

VI.

The District Court erred in overruling the motion of the defendants to require the Government to elect between Count I and Counts II, III and IV as to which the defendants should be tried upon, which motion was made immediately after the case was called for trial and before the introduction of any evidence, upon the ground that Count I charged the defendants together with others as having committed the crime charged in said Count I, [37] whereas the defendants alone are charged with having committed offenses in Counts II, III and IV. Due and timely exception was taken to the action of the Trial Court in overruling the defendants' motion to elect.

VII.

The District Court erred in refusing the defendants' counsel the right to ask the jurors if each of them would vote for only such verdict as to him

should seem right irrespective of what the other jurors might think except as the other jurors might influence him by legitimate argument. A juror, Lee J. Priest, being in the box, he was asked by Mr. McDonald this question:

Q. If you were accepted on the jury, Mr. Priest, could the defendants rely upon you to vote for no verdict except what you thought was right irrespective of what the other jurymen did—

The COURT.—The question is not fair. Need not answer.

Q. —except as they might influence you by legitimate argument? The fact that seven or eight or even more of the other jurors would vote differently from what you thought was the right verdict would not influence you to vote that way?

The COURT.—That is not a fair question. What we want to find out is whether the jury knows anything about this case, whether they are prejudiced, whether they have any preconceived notions about it; not what they would do under or upon a certain state of facts.

Mr. McDONALD.—I understand that on the *voir dire* counsel has a right to ask questions—

The COURT.—No. Proceed. We will not permit any questions upon what jurors will do in the future upon any state of facts being established. [38]

Mr. McDONALD.—Exception.

VIII.

The District Court erred in overruling defendants' motion for a return and suppression of the

liquors seized at the time of defendants' arrest, when it was renewed at the opening of the Government's case and to which due and timely exception was taken.

IX.

The District Court erred in admitting in evidence over the objection and exception of the defendants, the bottles of liquor as Government's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, for the reason that said liquor was seized in violation of defendants' constitutional rights.

X.

The District Court erred in permitting witness William Griffith to testify that he found two high-power rifles and two mauser pistols with convertible stocks on the launch of the defendants at the time of their arrest and in overruling defendants' objection thereto.

XI.

The District Court erred in overruling and in not granting the motions of the defendants for a direct verdict finding them not guilty on Count I, made at the close of the evidence introduced by the Government in support of the indictment, which motion was based upon the following several grounds:

(a) Insufficiency of the evidence to establish the overt act charged in said Count I.

(b) Insufficiency of the evidence to establish any conspiracy.

(c) Insufficiency of the evidence to establish the

overt act charged as against the defendant Fredericks. [39]

XII.

The District Court erred in overruling the motions of the defendants for a directed verdict of acquittal on Count I made at the close of the entire case and before it was submitted to the jury, which motion was based upon the following grounds:

(a) Insufficiency of the evidence to establish the overt act charged in said Count I.

(b) Insufficiency of the evidence to establish any conspiracy.

(c) Insufficiency of the evidence to establish the overt act charged as against the defendant Fredericks.

XIII.

The District Court erred in refusing defendants' counsel the right to again go into the facts on the trial as to the manner of the arrest of the defendants and the search and seizure of their launch, which refusal was duly excepted to.

XIV.

The District Court erred in overruling and in denying the motion of the defendants that the Government be ruled to elect whether it would proceed on Count III or Count IV, as one covers possession and the other transportation and the one is comprised and comprehended in the other.

XV.

The District Court erred in refusing to give to the jury the following instruction asked for by the defendants:

"If you should, however, be satisfied as to the existence of such conspiracy, you must then consider whether or not the overt act charged in said First Count of said indictment has been proved beyond reasonable doubt. Such overt act must be proved as laid in this indictment, that is, that on or about the 4th day of October, 1922, the said defendants Joseph Fredericks and Clarence Chambers, and each of them, from a foreign country, to wit, British Columbia, in the Dominion of Canada, did wilfully, knowingly and unlawfully carry and transport in and on said gas boat known as the 'Dragon' to a place near Stanwood, Washington, the intoxicating liquors described in [40] said indictment for the purpose of selling, bartering, exchanging, giving away, furnishing and otherwise disposing of said liquors in violation of the National Prohibition Act. And unless such overt act is proven as it is charged in the indictment and as I have stated it to you, the crime charged cannot be found by you to have been proven and you must return a verdict of not guilty as to each of the defendants on said Count I."

To the refusal to give which instruction, the defendants excepted in due time.

XVI.

The District Court erred in refusing to give to the jury the following instruction asked for by the defendants:

"I instruct you that if you should find from the evidence in this case that the defendants received this liquor on board the gas boat 'Dragon' near Deception Pass, in the State of Washington, knowing it to be liquor, they would be guilty of a violation of the law, yet you could not convict either one of these defendants upon either the first or second counts in this indictment, because to convict the defendants on the said counts, you must find beyond a reasonable doubt that they brought the liquor into the United States from British Columbia."

To the refusal to give which instructions, the defendants objected and saved their exception in the presence of the jury.

XVII.

The District Court erred in refusing to give the jury the following instruction asked for by the defendants:

"Even though the evidence should convince you that each of the defendants acted illegally and maliciously, still unless you are further convinced beyond all reasonable doubt that such acts were done pursuant to a mutual agreement and understanding, you must return a verdict of not guilty as to each of the defendants on Count I."

To the refusal to give which instruction, the defendants objected and saved their exception in the presence of the jury.

XVIII.

The District Court erred in giving to the jury that portion of the charge of the Court given to the jury, which is as follows: [41]

> "In order to establish a conspiracy there must be three things established. One is the conspiring together, the co-operating, the confederating, the conduct of the parties that so interrelate into each other as to preclude a conclusion other than that there was a conspiracy and understanding to do the particular thing that is charged. And then the next is to commit the offense,—the conspiracy to commit in this case the violation of the National Prohibition Act. And then before that is an offense something must be done by one of the parties to carry forward the conspiracy. It is immaterial what that act is. It might be sailing a boat down the stream, or it might be carrying a cargo or the prohibited commodity in a boat. It might be any minor thing. In this case the overt acts charged in the indictment are set forth in that count; and it is not necessary that the Government establish all of the overt acts charged. It is sufficient that they have proved one act that would carry forward the conspiracy."

To which instruction the defendants excepted in due time, upon the ground that it permitted the jury to find the defendants guilty of the conspiracy charged without finding the only overt act, to wit, the importation charged in the indictment to be

proved as laid but told the jury they could find the defendants guilty in spite of the fact that the overt act charged was not proved, provided they found the defendants had committed other overt acts not charged in said indictment.

XIX.

The District Court erred in giving to the jury that part of the charge of the Court given to the jury, which is as follows:

> "The Court withdrew,—as I stated a moment ago briefly,—Count 2. There is a difference between Count 2, importation, and the conspiracy count. Now, a conspiracy may be completed and effected without bringing in a drop of liquor as charged. Without bringing in any liquor, if the parties entered into a conspiracy to violate the National Prohibition Act, to import liquor from British Columbia, and one of the persons then does anything to effect that object—this is simply for the purpose of illustration—if he writes a letter to carry it forward, or if he runs a boat around the bay, if he does anything,—it is immaterial what it is,—to effect the object of the conspiracy, when then the offense is complete without bringing in any of the liquor. But to import any liquor into the United States, that means to bring it in. They must actually bring the liquor in before they would violate the importation act. But under the conspiracy act, that is not necessary. I merely go a little into that detail because of the argument that

was made before you by counsel for the defendants." [42]

To which instruction the defendants excepted in due time, upon the ground that it permitted the jury to find the defendants guilty of the conspiracy charged without finding the only overt act, to wit, the importation charged in the indictment to be proved as laid but told the jury they could find the defendants guilty in spite of the fact that the overt act charged was not proved, provided they found the defendants had committed other overt acts not charged in said indictment.

XX.

The District Court erred in giving to the jury that part of the charge of the Court given to the jury, which is as follows:

> "A conspiracy is sometimes denominated by law writers as a partnership in crime. Now, in a civil partnership, one partner binds the other by his acts and his statements with relation to matters within the partnership business. So in a criminal conspiracy, every person entering into a conspiracy is a partner in this conspiracy, and whatever he does or whatever he says during the continuance of the conspiracy binds the other partner; but after the conspiracy is ended or consummated, then the partnership ceases and a party then cannot bind the other party by any statements that he may make or anything that he may do."

To which instruction the defendants excepted in due time, because it fails to state that before a per-

son enters into a conspiracy or does an act that contributed to effectuate the object of the conspirators can be guilty, he must have knowledge of the existence of the conspiracy, and that the act that helps in the accomplishment of its object is done knowingly and with the intention of bringing about the accomplishment of the conspiracy.

XXI.

Thereafter, and within the time limited by law, and the order and rules of the Court, the said defendants and each of them moved for a new trial, which said motion was overruled by the Court, and an exception allowed the defendants, which [43] ruling of the Court, the defendants now assign as error.

XXII.

Thereafter, and within the time limited by law, the defendants moved the Court that judgment and sentence upon the verdict rendered in the above-entitled cause be arrested and stayed, which motion was overruled by the Court and exception was allowed to the defendants, and now the defendants assign as error the overruling of the said motion.

XXIII.

The District Court thereafter entered judgment and sentence against said defendants and each of them upon the verdict of guilty rendered upon the said indictment, to which ruling and judgment and sentence the defendants and each of them excepted and now the defendants assign as error that the Court so entered judgment and sentence upon the verdict, because said defendants were convicted

on proof taken from the violation of their constitutional rights and further because said Count I did not state a crime and there was in addition no evidence to support the only overt act alleged therein and judgment upon said Count I as entered was without validity in law. And the Trial Court further erred in imposing sentence upon Counts III and IV for the reason that the two offenses charged in said Counts include and comprehend each other, and the judgment as entered imposed two penalties for one offense, i. e., sentence should have been imposed, if at all, upon one or the other of Counts I or II but not upon both.

And as to each and every of said assignments of error as aforesaid, the defendants say that at the time of the making of the order or ruling of the Court complained of, the defendants duly asked and were allowed an exception to the ruling and order of the Court. [44]

WHEREFORE, defendants and each of them pray that the judgment of said Court be reversed and this cause remanded to the said District Court with directions to dismiss the same and discharge said defendants from custody and exonerate the sureties on his bail bond or in any event to grant defendants a new trial.

CARKEEK, McDONALD, HARRIS & CORYELL,

JOHN F. DORE,

Attorneys for Defendants.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern

Division. Mar. 19, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [45]

United States District Court, Western District of Washington, Northern Division.

No. 7153.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOSEPH FREDERICKS, *alias* JOSEPH WATSON, and CLARENCE CHAMBERS,
Defendants.

Appeal and Bail Bond of Joseph Fredericks.

KNOW ALL MEN BY THESE PRESENTS: That we, Joseph Fredericks, as principal, and the National Surety Company of New York, a corporation organized and existing under and by virtue of the laws of the State of New York, and authorized to transact the business of surety in the State of Washington, as surety, are held and firmly bound unto the United States of America, plaintiff in the above-entitled action, in the penal sum of Twenty-five Hundred Dollars ($2500.00), lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that

WHEREAS the above-named defendant, Joseph Fredericks, was on the 19th day of March, 1923, sentenced in the above-entitled case No. 7153 to serve a term of eighteen months in the Federal Penitentiary at McNeil's Island, in the State of Washington, and in addition thereto to pay a fine of One Hundred Dollars ($100.00); and

WHEREAS, the said defendant has sued out a writ of [46] error from the sentence and judgment in said cause to the Circuit Court of Appeals of the United States for the Ninth Circuit; and

WHEREAS, the above-entitled Court has fixed the defendant's bond to stay execution of the judgment in said case in the sum of Twenty-five Hundred Dollars ($2500.00),

NOW, THEREFORE, if the said defendant, Joseph Fredericks, shall diligently prosecute his said writ of error to effect, and shall obey and abide by and render himself amenable to all orders which said Appellate Court shall make, or order to be made in the premises, and shall render himself amenable to and obey all process issued, or ordered to be issued, by said Appellate Court herein, and shall perform any judgment made or entered herein by said Appellate Court, including the payment of any judgment on appeal and shall not leave the jurisdiction of this court without leave being first had and shall obey and abide by and render himself amenable to any and all orders made or entered by the District Court of the United States for the Western District of Washington, Northern Division, and will render himself amenable to and

obey any and all orders issued herein by said District Court and shall, pursuant to any order issued by said District Court, surrender himself, and will obey and perform any judgment entered herein by the said Circuit Court of Appeals or the said District Court, then this obligation to be void; otherwise to remain in full force and effect.

Sealed with our seals and dated this 19th day of March, 1923.

[Seal] JOSEPH FREDERICKS.

NATIONAL SURETY COMPANY OF NEW YORK.

By ROBT. W. WHYTE,
Resident Vice-President.

J. GRANT,
Resident Assistant Secretary. [47]

The foregoing bond is hereby approved this 19th day of March, 1923, and the marshal of this court is hereby ordered to release the defendant Joseph Fredericks from custody pending the determination of his writ of error and the fulfillment of the condition of the foregoing bond.

JEREMIAH NETERER,
Judge.

Approved this 19th day of March, 1923.

JEREMIAH NETERER,
United States District Judge.

DE WOLFE EMORY,
Assistant United States Attorney.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern

Division. Mar. 19, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [48]

United States District Court, Western District of Washington, Northern Division.

No. 7153.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH FREDERICKS, *alias* JOSEPH WATSON and CLARENCE CHAMBERS,

Defendants.

Appeal and Bail Bond of Clarence Chambers.

KNOW ALL MEN BY THESE PRESENTS: That we, Clarence Chambers, as principal, and the National Surety Company of New York, a corporation organized and existing under and by virtue of the laws of the State of New York, and authorized to transact the business of surety in the State of Washington, as surety, are held and firmly bound unto the United States of America, plaintiff in the above-entitled action, in the penal sum of Twenty-five Hundred Dollars ($2,500.00), lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that

WHEREAS the above-named defendant, Clarence Chambers, was on the 19th day of March, 1923, sentenced in the above-entitled case No. 7153 to serve a term of eighteen months in the Federal Penitentiary at McNeil Island in the State of Washington, and in addition thereto to pay a fine of One Hundred Dollars ($100.00); and

WHEREAS, the said defendant has sued out a writ of [49] error from the sentence and judgment in said cause to the Circuit Court of Appeals of the United States for the Ninth Circuit, and

WHEREAS, the above-entitled court has fixed the defendant's bond to stay execution of the judgment in said case in the sum of Twenty-five Hundred Dollars ($2,500.00),

NOW, THEREFORE, if the said defendant, Clarence Chambers, shall diligently prosecute his said writ of error to effect, and shall obey and abide by and render himself amenable to all orders which said Appellate Court shall make, or order to be made in the premises, and shall render himself amenable to and obey all process issued, or ordered to be issued, by said Appellate Court herein, and shall perform any judgment made or entered herein by said Appellate Court, including the payment of any judgment on appeal and shall not leave the jurisdiction of this court without leave being first had and shall obey and abide by and render himself amenable to any and all orders made or entered by the District Court of the United States for the Western District of Washington, Northern Division, and will render himself amenable to and obey any and all orders issued herein by said District

Court and shall, pursuant to any order issued by said District Court, surrender himself, and will obey and perform any judgment entered herein by the said Circuit Court of Appeals or the said District Court, then this obligation to be void; otherwise to remain in full force and effect.

Sealed with our seals and dated this 19th day of March, 1923.

[Seal] CLARENCE CHAMBERS,
NATIONAL SURETY COMPANY OF NEW YORK.
By ROBT. W. WHYTE,
Resident Vice-President.
J. GRANT,
Resident Assistant Secretary. [50]

The foregoing bond is hereby approved this 19th day of March, 1923, and the marshal of this Court is hereby ordered to release the defendant Clarence Chambers from custody pending the determination of his writ of error and the fulfillment of the condition of the foregoing bond.

JEREMIAH NETERER,
Judge.

Approved this 19th day of March, 1923.
JEREMIAH NETERER,
United States District Judge.
DE WOLFE EMORY,
Assistant United States Attorney,

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Mar. 19, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [51]

United States District Court, Western District of Washington, Northern Division.

No. 7153.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH FREDERICKS, *alias* JOSEPH WATSON and CLARENCE CHAMBERS,

Defendants.

Bill of Exceptions on Behalf of Defendants.

BE IT REMEMBERED that at the November Term, 1922, came the said United States of America into the said Court and impleaded the said defendants in a certain bill of indictment, and that thereafter the defendants filed a motion herein to quash the indictment and for the return or suppression in evidence of the alleged spirituous liquor seized at the time of the arrest of the defendants upon the ground that the same was seized in violation of the constitutional rights of the defendants; and that thereafter on the 4th day of December, 1922, the said motion came on for hearing before the Court, at which time the said defendants and plaintiff read and offered in evidence certain affidavits, which are in words and figures as follows, to wit:

(Caption omitted.)

Joseph Fredericks and Clarence Chambers, being each first duly sworn, on oath each speaking for himself and not one for the other, deposes and says:

That the defendants now are and were at all times hereinafter mentioned, and for several years previously have been, citizens of the United States and residents of the State of Washington in this judicial district. [52]

That on the 4th day of October, 1922, at about 6:15 in the evening, defendants were on board of that certain gas boat named "Dragon" in the south channel of the Stillaguamish River near Stanwood, Washington, and were approaching the said town, and among other things there were two hundred thirty-five (235) cases of whiskey and eight (8) cases of gin on said launch, that the said whiskey and gin was enclosed in ordinary gunny sacks; and that the said launch was enclosed with a cabin; and that the said sacks containing the said whiskey and gin were inside of said cabin and entirely hidden from the view of persons outside of the said launch so that there was no visible evidence of the commission on the part of any persons on said launch of unlawfully having in their possession or of unlawfully transporting intoxicating liquors or any other crime; that when defendants had arrived at a point about one thousand (1,000) feet from the dock at the town of Stanwood and while they were still as they were informed and believed, and allege the fact to be, outside the corporate limits of the town of Stanwood, four (4) men, whom defendants afterwards learned were William A. Linville, William Justi and William Griffith, Federal Prohibition agents, and a citizen by the name of Oscar Hanson, suddenly rose up from beside a dike

on the river bank about twenty (20) feet from defendants and leveled rifles and sawed-off shotguns at defendants, at the same time crying out, "We know who you are. Stop or we'll kill you," that defendant Clarence Chambers, who was in charge of said launch, immediately brought the same to a standstill and immediately, not knowing the men on the bank to be officers and believing them to be hold-up men, stepped back into the cabin, whereupon the four men on the bank emptied their guns into the boat, one of the bullets striking said defendant Clarence Chambers on [53] the leg and seriously wounding him; and that defendant Joseph Fredericks thereupon called out to the men on the bank to desist shooting and he would bring the boat in, which he did; that defendants made no attempt at resistance, but complied with the command of the said Linville, whereupon the said four men came aboard the said boat and began a search thereof without any warrant or authority whatsoever.

That at the time the said Federal Prohibition agents and the said Hanson acting with them did not exhibit or claim to defendants or either of them that they had any warrant to search the said launch and without any legal right or authority whatsoever and without having any warrant of arrest, seized defendants and the launch, of which the said defendant Clarence Chambers was in charge, together with the following described personal property, which was in the possession of the said Clarence Chambers:

One compass in a wooden box, one compass in a brass metal box, 6 charts of Puget Sound, 8 life-preservers, tools of all kinds, one storage battery, one 22 high-powered rifle, one 38–55 Winchester rifle, 2 Mauser pistols, 4 army blankets, 2 quilts, one lap robe, 4 mattresses, 1 electrical coil, *o* razor, 1 shaving brush, 1 hair-brush, 1 comb, 1 bottle toilet water, 1 spot-light, 4 pair shoes, 1 pair boots, 1 oil-burner stove, 1 phonograph, 1 frying-pan, 1 coffee-pot, various other table-knives, forks and cooking utensils, 1 speedometer, 1 anchor, 150 feet inch rope, 3 launch lights, 1 large mirror, 1 paving assessment receipt, gas and oil receipts, 1 fire-extinguisher, 235 cases whiskey, 8 cases of gin, 4 wire bed-springs, 2 pair field-glasses;

Contrary to the desires and wishes and without defendant's consent, unlawfully kept defendants in custody without the privilege of giving bail or communication with anyone; and unlawfully and contrary to these defendants' desires and wishes and without their consent seized and took in their possession the said launch and other personal property without any authority at law whatsoever, and without claiming to defendants to have any search-warrant or without exhibiting, reading or [54] delivering a copy of any search-warrant or any warrant whatsoever, and having no visible evidence of defendants' unlawfully possessing or transporting any intoxicating liquors.

That the said agents were acting under the direction and command of Roy Lyle, Federal Prohibition director for the State of Washington; and that the said hereinbefore described agents took the said

launch and other personal property herein described and turned the same over to said Lyle; and defendants are informed and believe and charge the fact to be, that the said Lyle has reported the seizure of the same to Thomas P. Revelle, United States Attorney for the Western District of Washington, and is holding the same subject to the direction of the said United States Attorney; and that said agent, William Griffith, acting by and under the direction of the said Lyle, thereafter instituted a criminal prosecution of your defendants on the charge of unlawfully possessing and transporting the intoxicating liquors heretofore unlawfully seized; and defendants were required to get security for their appearance to answer said charge in case the Grand Jury found a true bill of indictment against them; and that thereafter on the 26th day of October, 1922, the defendants were indicted upon the testimony and evidence derived wholly and exclusively by the unlawful search and seizure herein set out.

That at no time, either at the time of the arrest or thereafter, have the said prohibition agents stated to your petitioners that they were acting under the authority of any search-warrant until at a hearing before His Honor Robert W. McClelland, United States Commissioner, on October 10, 1922, when the said William A. Linville testified that before he shot he called to the defendants that he had a search-warrant, and testified further that the same was at all times in his pocket and was not exhibited [55] or attempted to be served until after the search and arrest of the defendants, and

after one of the defendants had been taken to the hospital, and in the absence of the other he laid the same on the compass-box in said launch, as more fully appears from a transcript of said testimony which is filed herewith.

That no copy of said warrant was ever exhibited to defendants, or either of them, and that until the said hearing before the United States Commissioner on October 10, 1922, defendants never heard it claimed that the said prohibition agents, or anyone, claimed to have any search-warrant.

That the records and files of the United States Commissioner show that on the 27th day of September, 1922, an affidavit for a search-warrant was issued, of which the following is a true and correct copy:

United States of America,
Western District of Washington,
Northern Division,—ss.

APPLICATION AND AFFIDAVIT FOR SEARCH-WARRANT.

L. Regan, being first duly sworn, on his oath deposes and says: That he is a Federal Prohibition Agent duly appointed and authorized to act as such within the said District; that a crime against the Government of the United States in violation of the National Prohibition Act of Congress has been and is being committed in this, that, in the City of Stanwood, County of Snohomish, State of Washington, and within the said District and Division above named, one John Doe Foster, on one gas screw-boat named "Dragon" on the 27th day

of September, 1922, and thereafter was, has been and is possessing, transporting intoxicating liquor, all for beverage purposes, on premises described as ——, and on the premises, used, operated and occupied in connection therewith, all being in the County of Snohomish, State of Washington, and in said District, and all of said premises being occupied or under the control of John Doe Foster, all in violation of the Statute in such cases made and provided and against the peace and dignity of the United States of America.

WHEREFORE, this said affiant hereby asks that a search-warrant be issued directed to the United States Marshal for the said district and his deputies, and to any National Prohibition Officer or Agent or deputy in the State of Washington, and to the United States Commissioner of Internal Revenue, his assistants, deputies, agents or inspectors, directing and authorizing a search of the person of the said gas screw-boat named "Dragon," and the premises above described, and seizure of any and all of the above-described property and intoxicating liquor and [56] *and* means of committing the crime aforesaid, all as provided by law and said Act.

(Signed) L. REGAN.

Subscribed and sworn to before me this 27 day of September, 1922.

[Seal] (Signed) R. W. McCLELLAND,
United States Commissioner, ——— District of Washington.

That the said launch and the said two hundred thirty-five (235) cases of whiskey and eight (8)

cases of gin, together with all the other personal property, are being unlawfully and wrongfully held by the said Federal Prohibition Director and District Attorney in violation of defendants' rights under the constitution and laws of the United States.

That while defendants are informed and believe, and charge the fact to be, that the said Roy Lyle has the manual custody of the said property including the launch, liquor and other effects that he is holding them subject to the order and disposition of the United States District Attorney for this district; and that the said United States District Attorney used as evidence before the Grand Jury part of the liquor taken; and further proposes to use said intoxicating liquor, launch and other property at the trial of the above-entitled cause.

That the seizure aforesaid violates the rights of the defendants under the constitution and laws of the United States; and the retention of possession of same by the agents, officers and representatives of the Government is unlawful for the following reasons:

1. That no proper warrant was ever issued for the arrest or search of the said defendants of the said launch.

2. No sufficient affidavit was ever made as the basis for issuance of any search-warrant.

3. No search-warrant was exhibited or read to the [57] defendants, or either of them, at the time of the search and seizure.

4. No copy of the search-warrant was served on the defendants, or either of them, at the time of the search and seizure.

5. No receipt for the property herein mentioned was given to the defendants, or either of them, at the time it was taken from them.

6. That no proper inventory under oath of the said property taken was made and returned by the United States Commissioner as required by law.

7. That no inventory of the property taken was, or has been, given to the defendants, or either of them.

8. That no valid warrant of arrest was in the hands of said prohibition agents at the time of the unlawful search and seizure.

9. That said search was made in the night time in that it was after sundown.

10. That no offense was being committed by the defendants in the presence of said officers at the time of said arrest nor was there any visible evidence of the commission by the defendants, or either of them, of unlawfully having in his or their possession or of unlawfully transporting intoxicating liquor.

That thereafter on the 13th day of October, 1922, petitioners caused a demand in writing for the return of the property unlawfully seized to be served upon the said Thomas P. Revelle, United States District Attorney for the Western District of Washington, and Roy Lyle, Prohibition Director of the State of Washington, in person a copy of which demand is attached hereto, marked Exhibit "A" and

made a part hereof as [58] though here set out in full, but that despite said demand the said Revelle and Lyle retained the said launch, liquor and effects in their possession, and failed to return the same to the defendants.

That on the 21st day of October, 1922, the defendants presented a petition in Commissioner's No. 1781 to the Honorable Jeremiah Neterer, with the request that he issue an order to show cause against the United States Attorney and Federal Prohibition Director, which matter was argued before His Honor after notice to the United States Attorney's office, on the 25th day of October, 1922, and after being taken under advisement denied, as your affiants are informed by His Honor on the ground that there was no jurisdiction to entertain such motion in said proceeding, there being no case pending in court against the defendants at that time, and the court being unable to control the action of Government officers prior to an action pending in the court.

That the said property is being unlawfully and improperly held by the said District Attorney and Prohibition Director and by reason thereof and the facts herein set forth the defendants' rights under the constitution and laws of the United States have been and will be violated unless the Court orders a return of said launch, intoxicating liquors and other personal effects herein described.

(Signed) JOSEPH FREDERICKS.

(Signed) CLARENCE CHAMBERS.

(Subscribed and sworn to, etc.)

Attached as Exhibit "A," written demand for return of articles as set forth in foregoing affidavit. [59]

WILLIAM A. LINVILLE (certified copy of testimony given before the United States Comissioner McClelland on the 10th day of October, 1922, preliminary hearing), the witness produced on behalf of plaintiff, being duly sworn, testified as follows:

On the 4th of October, Agents Griffiths, Justi and myself had been stationed at Stanwood looking for the boat "Dragon." We sighted her in south bay about one o'clock in the afternoon. About 3:30 she moved in past the mouth of the south channel and tied up to some dolphins. We were lying behind a dike where the channel comes close to the shore and about six o'clock the boat came up the south channel toward Stanwood. We lay behind the dike until she was directly opposite us and we could see sacks of liquor in the boat through the windows. We stood up on the dike, everyone showing his badge. I announced we were Federal officers, to stop the boat as we had a search-warrant for it. The man at the wheel hesitated and I fired a shot across the bow. The boat was not brought in and the order to the man at the wheel to stand where he was, was not obeyed, instead he jumped through the pilot-house, at which time the shotgun was fired through the boat. Everybody lay behind the dike. Mr. Chambers then came out and brought the boat in and we took Mr. Chambers to

the hospital. The boat had two hundred nineteen (219) sacks containing twelve (12) bottles of liquor, and sixteen sacks containing six bottles of gin each, besides there was a 35–35 rifle, 22 high-power rifle and 2 Mausers with convertible stocks. Liquor was Canadian liquor.

Cross-examination.

I am a prohibition agent. This occurred near Stanwood. I had been waiting up there personally for about three [60] days. Agents Stetson and Regan had been with us but were not at the time.

We first saw the boat about noon. We climbed up on a barn on the property of a Mr. Hanson, and watched it from there through field-glasses. About four o'clock the boat came into the mouth of the river at the place where the shooting occurred, which was about one thousand (1,000) feet from the Stanwood Dock.

The launch was about forty-nine (49) feet eight (8) inches in length, eight (8) foot beam, and about four (4) feet deep. As the boat was coming up the channel, I could see sacks piled up inside the cabin.

Q. The boat had a cabin on it, had it?

A. Yes, a cabin practically the whole length of it, with the exception of a few feet at the bow.

Q. Any curtains on the windows?

A. Yes, at some of them there were curtains.

Q. And at some there were no curtains?

A. At some of them the curtains were pulled aside a little.

Q. All you saw was sacks?

A. Well, from experience with the liquor traffic, why it was very easy to distinguish that it was a sack of liquor, and not potatoes.

Q. That is not exactly answering my question. I say, what you saw was sacks. A. Yes.

Q. And those were ordinary gunny-sacks, were they? A. Yes.

The other agents and a young man by the name of Oscar Hanson and I lay behind the dike for about three-quarters of an hour before the boat got opposite us. There were some farmers [61] working in a field near there. When we first hailed the boat it was about thirty (30) or thirty-five (35) feet away from us and directly in front of us. At that point it was necessary for a boat to come very close in to the shore. I think the boat was traveling about seven (7) or eight (8) miles an hour. There is quite a current in the river there. I was in charge of the party. I got up on the dike and said, "We are Federal officers. Stop this boat. We have a search-warrant. Stand where you are." The other officers also took part in the hailing. I had a rifle and the other agents had sawed-off shotguns and buckshot. I also had a revolver. The orders not being obeyed, I fired a shot over the bow of the boat. Mr. Chambers, who was piloting the boat, called out, "Well, I am stopping it." *Then* Chambers jumped to get back in Agent Justi fired through the door, shooting Chambers. The engine was then in neutral and the boat was about standing still, moving very slowly. The boat at that time was about twenty (20) or twenty-

five (25) feet away from us. Fredericks then called out not to shoot and I told him to bring the boat in quick. I saw no weapons in the hands of the defendants. Fredericks swung the boat into the bank and I climbed on to it, told the men to watch Fredericks and went back through the boat and found Chambers holding his injured leg. I took hold of him and lifted him off the boat and then we decided it would be quicker to take him right up on the boat. I was the first to get on the boat, the others came after me. Fredericks ran the boat up to the dock, which took from five to ten minutes. I took Chambers to the hospital and left Fredericks in charge of the other agents.

Q. Now, you say that you had a search-warrant?

A. Yes, sir. [62]

Q. Who had it? A. I had it.

Q. What did you do with it?

A. Left it in the pilot-house of the boat.

Q. Whereabouts?

A. Right in the compass-box.

Q. Did you have anything more to do with the search-warrant, further than you have detailed?

A. Well, no. I didn't get the search-warrant myself.

Q. Well, I didn't ask you that. I asked you if you made any other statements about it, or did anybody else in connection with it, other than what you have detailed.

A. No, I just—after boarding the boat and finding it was loaded with liquor, I didn't pay any at-

tention to the search-warrant then, until we tied up. I left the search-warrant in the boat.

Q. Where is it now?

A. As far as I know, it is still on there.

Q. That is the last place you saw it? A. Yes.

Q. Where did you say?

A. In the compass-box in the pilot-house.

Q. When you laid it there, where was Mr. Fredericks? A. I don't know.

Q. Where was the other man, Chambers?

A. Why, he was in the hospital.

Q. Oh, then you laid it on the compass-box after the boat had been tied up?

A. Yes, that was after the boat was tied up that it was there. We saw the liquor and I thought after the man was wounded he was possibly of more importance than leaving that search-warrant [63] right there at that time.

Q. So you had it in your pocket all the time prior to that. A. Yes, sir.

Q. The search-warrant was issued to whom, do you know? A. Mr. Regan, I believe.

Q. And by whom, do you know?

A. I couldn't say.

Q. Do you know whether it was issued by a justice of the peace or a commissioner?

A. It was from the U. S. Commissioner.

Q. But whether it was Everett, Stanwood, or where, you don't know?

A. I believe it was issued—

Q. You didn't look at it yourself?

A. Yes, I read it over.

Q. You read it over? A. Yes.

Q. To yourself? A. Yes.

Q. When? A. On the day I received it.

Q. What day was that?

A. I believe it was on the 3d.

Q. You don't know what day it was dated?

A. No, right now I don't.

Q. You don't know the name of the United States Commissioner on it?

A. Yes, I believe it was United States Commissioner McClelland.

Q. The Judge here? A. Yes, sir.

Q. But what date it bore you do not know? [64]

A. Well, it was dated within the—prior to October 4th—or 1st.

Q. It was dated prior to October 1st?

A. No, I say it was not dated prior to October 1st.

Q. It was October 1st or afterwards?

A. I would say so, yes.

Q. And you read it over at the time it was handed to you on the 3d—by whom was it handed to you?

A. By Agent Regan.

Q. That was at the time he left your party?

A. Well, he told me he didn't know where he would be, and I had better take that search-warrant.

Q. So that you had it in your pocket then and kept it there up until the time after the boat was docked and these men had gone, and then you laid it in the compass-box in the pilot-house?

A. No, this man Fredericks was still on board. I hadn't gone up with him yet.

Q. I thought you said you didn't know where he was at that time? A. Who?

Q. Fredericks.

A. No, I knew where Fredericks was all the time.

Q. Where was he?

A. He was on the boat there.

Q. What part of the boat?

A. Standing around there. I didn't pay much attention to just where he was standing.

Q. Was he in the pilot-house?

A. Yes—well, I wouldn't say as to that.

Q. You don't know where he was?

A. I saw him there as I came down, and he was under the [65] supervision of one of the other agents, so I thought they were able to take care of him.

Q. He was not under your supervision at that time directly? A. Well—

Q. That is to say, you detailed another man to watch him?

A. You might put it that way, yes.

Q. Which agent was that?

A. Well, it was none in particular mentioned to watch him.

Q. You cannot tell us now which one it was?

A. No.

Q. How long was this after you got to the dock that you pulled the search-warrant out of your pocket and laid it in the compass-box?

A. Why, it was right after I brought this man—or had taken this man up to the hospital and I came back.

Q. About what time was that?

A. Why, I would say around ten minutes past six or so.

Q. Did you have a copy of the search-warrant?

A. I did not.

Q. Did anybody else?

A. Yes, I think Mr. Regan had.

Q. Where was Mr. Regan at that time?

A. I couldn't say.

Q. When did Mr. Regan appear on the scene after that? A. The next day, the next morning.

Q. Did you have the copy or the original?

A. I had the original, I think.

Q. Did you notice any seal on it? A. Yes, sir.

Q. You have been accustomed to serving search-warrants before, haven't you? [66]

A. Yes.

Q. You are familiar with the procedure in serving them? A. Yes, sir.

Q. Are you the man that made the seizure in this case?

A. No, I think that would be made jointly with the three agents.

Q. Who has the custody of this property now?

A. Why, as far as I know, the liquor is in the vaults, and the boat is tied up in care of the Government.

Q. Have you got a list of the things that you seized? A. Yes, sir.

Q. Where is that list?

A. I haven't it, but I know that a list was made, because I know it was made. It was gone over and checked. I cannot say who has it. Personally I ran the boat to Seattle, and as I hadn't slept for possibly three nights I took a day off for a sleep, so I don't know.

Q. You say a list was made? A. Yes.

Q. Do you know where that list is?

A. I think possibly in the office, in the hands of the custodian there, Agent Kline.

Q. There was considerable other property besides this liquor you have testified to, was there?

A. Well, there was blankets and bed-springs.

Q. You haven't with you a detailed list?

A. I haven't personally, no. I didn't make any list of what was on board whatever.

Q. Shaving outfits and cooking utensils?

A. Yes, I noticed a stove in the back there and some dishes.

Q. Isn't it your practice for one agent to make a seizure and make a report, and have the custody of the property, [67] or what are the regulations on that?

A. Yes, ordinarily that is customary.

Q. But in this case you were not the man who did that?

A. Well, I personally haven't made out any seizure report or—

Q. But you were in charge of the party?

A. I was at that time; yes, sir.

Q. And no report has been made as far as you know? A. No, sir.

Mr. McDONALD.—That is all.

The COMMISSIONER.—I think that would establish the probability. I do not see the necessity of examining any further witnesses. Do you want to put in any evidence?

Mr. McDONALD.—No. I think I would like to ask one other question.

Q. Can you state positively whether you had the original search-warrant or the copy?

A. I wouldn't state positively which one it was. I am under the impression it was the original.

Q. And your impression is that Agent Regan had the copy? A. That is my impression of it, yes.

Q. Are you positive that you announced that you had a search-warrant when you first hailed the boat?

A. Yes, I told them I had a search-warrant.

Q. It was in your pocket at the time?

A. Yes, sir. I wasn't taking it out and waving it at that time.

Q. You did not waive it at them?

A. No, sir.

Q. At no time? A. No, sir. [68]

Q. When was it that you saw those sacks first that you mentioned?

A. Why shortly before the boat was ordered to stop.

Q. About how long?

A. Oh, as soon as she came in view of us you could readily see it.

Q. When he got within sixty feet, or such a matter? A. What is that?

Q. When they were within about sixty feet?

A. Oh, no, they were closer than that then.

Q. Just a second or so before you called out?

A. Yes.

Q. And they were the ordinary gunny-sacks?

A. Yes. Well, it is ordinary burlap.

Mr. McDONALD—That is all.

(Caption omitted.)

Comes now THOMAS P. REVELLE, United States Attorney in and for the Western District of Washington, and being first duly sworn, deposes and says:

That neither he nor any of his assistants, agents or employees now has nor at any time has had in his possession or subject to his direction or control the gas boat, appurtenances and liquor, nor any part or parcel of the same, mentioned in the affidavit of said Joseph Fredericks and Clarence Chambers filed in this cause on November 1, 1922, in support of their motion to quash the indictment and for return of property.

(Signed) THOMAS P. REVELLE.

(Subscribed and sworn to, etc.) [69]

(Caption omitted.)

WALTER M. JUSTI, being first duly sworn, on oath deposes and says: That at all times herein mentioned he was, and now is a Federal Prohibition Agent for the State of Washington.

That he has read the affidavits of Joseph Fredericks and Clarence Chambers in support of the motion to suppress the evidence and for the return of property, and denies each and every allegation thereof, excepting only as may appear or be stated in this affidavit, and particularly does this affiant deny that the said sacks containing the said gin and whiskey loaded on the gas boat "Dragon" were not plainly visible to this affiant prior to any command given to the defendants, or either of them, to stop the boat or that they were under arrest.

That on October 4th, 1922, a few minutes prior to 5:45 in the evening and before dusk and at a time when objects were plainly discernible and visible for a distance of more than a quarter of a mile, the defendants proceeded up the south channel of the Stillaguamish river toward Stanwood, Washington, in charge of and on that certain gas boat named "Dragon." That this affiant, in company with Agent Linville, had first seen the said gas boat in the afternoon of said date at the hour of about 3 P. M. and had watched the movements of said gas boat from about 3 P. M. until the time of its capture; that the said gas boat was moored in one of the inlets off what is known as South Bay, being the expansion of the mouth of the south channel of the Stillaguamish river some three or four miles from the point at which the said boat was captured. That this affiant observed the said gas boat leave its first anchorage at about 4 P. M., at which time this affiant in company with Federal Prohibition Agents S. C. Lin-

ville, W. J. Griffiths and a citizen named Oscar Hanson, drove around to [70] the east and south of the town of Stanwood and took up a position along the south channel of the said river behind the dike at the point where the said boat was captured, and after taking up this position affiant observed the said gas boat "Dragon" tied up at some piling about a half a mile down the river from the place of observation.

That about the hour of 5:30 P. M. on said October 4, 1922, this affiant observed the said gas boat leave her mooring at the said piling and proceed up the said channel toward the point where this affiant, in company with said other agents and the said Hanson were stationed; that as the said gas boat was proceeding up the said channel slowly against the current towards the town of Stanwood, and when it was at a distance of 75 feet or more from this affiant, he saw clearly and plainly piled in the cabin of said boat a large number of gunny-sacks and saw that said boat was heavily loaded with said gunny-sacks; that this affiant saw and observed that the said gunny-sacks were the same kind and dimensions and sewed and tied in the same manner, with two ears at one end, as are used to contain whiskey and intoxicating liquor; that the said sacks were piled up above the ledges of the windows in said cabin; that the outlines of the bottles were visible through the gunny-sacks; that this affiant has seen a large number of such sacks in his experience as Prohibition Agent covering about a year; that this affiant knows from experi-

ence the containers and sacks of whiskey and gin and believed that the sacks which he saw on board the gas boat "Dragon" were sacks of intoxicating liquor, and that said boat was heavily laden with said liquor; that the cabin window on the right hand side, which was the side of the gas boat next to this affiant and his companions, was left down from the top and that he observed the said sacks of liquor [71] through said windows; that he also observed the said sacks of liquor piled in the cabin through the window of the pilot-house and the partially open door between the said pilot-house and the said cabin; that this affiant observed the said liquor some appreciable time before any of the officers disclosed themselves or ordered the boat to stop, and that this affiant was looking at said boat and the said liquor while the boat traveled at least the distance of 50 feet and that this affiant called the attention of his companions to the said liquor.

That before the prow of said boat came abreast of any of the said officers and when it was about twenty feet away from the said officers, all of the said agents arose from behind the dike where they were stationed and observed the said boat and agent S. C. Linville in a very loud and commanding tone of voice stated: "Stop that boat. We are Federal Prohibition Agents. We have a search-warrant for your boat and you are under arrest. Stick her nose into the bank there."

That all of the said prohibition agents had their badges pinned on the outside of their coats and

that said badges were of bright polished metal and were plainly visible to the defendants.

That at said time the defendant Chambers was in the pilot-house at the wheel; that the said gas boat was so constructed that the engine and all of the machinery, the clutch and the gear could be operated by the man at the wheel; that as above stated, the window of the pilot-house next to the agents, or between the agents and the said Chambers, was lowered its full length, and the said Chambers was standing right next to the said open window; that the said Chambers, instead of obeying the command of the said officers, increased the speed of said boat and attempted to spurt ahead; that thereupon [72] Agent Linville fired a shot across and in front of the bow of the boat and into the water, and not at the defendants, or either of them, and each and every one of the said agents yelled in a loud tone of voice: "We are Federal Prohibition Agents. Stop that boat. You are under arrest."

That after the said shot was fired by the said agent Linville into the water and ahead of the bow of said boat, the said boat had reached a point abreast and slightly ahead of the said agents, and thereupon the said Chambers threw the clutch out of said boat so that the same did not further proceed ahead but left the engine still running, at which time said Chambers stated: "She is stopped now."

That the said Agent Linville and each of the said agents stated to the defendants in loud tones

which could plainly be heard, over and over again, not only once but more than half a dozen times that they were Federal Prohibition Agents, that they had a search-warrant for the boat; that the defendants were under arrest; that the defendants should bring the boat in at once to the bank and that not only did Agent Linville but each of said agents, including this affiant, especially commanded the said Chambers not to leave the pilot-house and not to make any move except to bring the boat into the bank where they could board her, but instead of obeying said command the said Chambers allowed the boat to drift down with the current and away from the said officers; that in spite of the express commands given over and over by these officers and after they had fully disclosed their identity and shown their badges and authority, the said defendant Chambers suddenly darted into the cabin and out of sight of said officers; that this affiant, as well as his companions had been informed and they firmly believed that the said boat was heavily armed [73] and had been informed and believed that the operators of said boat had threatened to shoot and kill any officers who should interfere with them, and they believed that the said Chambers had jumped into the said cabin for the purpose of securing firearms with which to shoot this affiant and his companions; that thereupon the officers did fire one shot into and towards the boat, one of the officers shooting into the gas-tank for the purpose of disabling it, and another into the cabin. The shots which went into the gas-tank and into the

cabin were from a sawed-off shotgun loaded with buckshot; that one of the buckshot passed through a portion of the fleshy part of the leg of Chambers just above the knee, inflicting a flesh wound which bled profusely; that as a matter of fact the officers did find the boat to be very heavily armed, and at the point and place where the defendant Chambers darted into the cabin there were found two high-powered rifles, and one Mauser automatic convertible case gun, and one similar Mauser gun in the pilot-house, each of the guns, except one high-powered rifle, being fully loaded, with shells in the chambers, ready for instant action; that at the time this affiant fired he believed himself in imminent danger of serious bodily harm and believed that the defendants intended to fire on this affiant and the said officers and to escape with said boat and its cargo of liquor.

That after the command had been first given by said Linville to bring the boat into shore and before this affiant fired toward said boat, this affiant observed the defendant Fredericks stick his head out of a window in the stern of said boat and after looking at these agents hurriedly slam the window shut.

That while all these events were taking place it [74] was broad daylight and just about 5:45 P. M. and some minutes prior to 6 P. M. That these events took place about 1,000 feet below the dock at the town of Stanwood; that fully three minutes elapsed from the time the said Chambers threw out the clutch and the time the agents shot

into the boat, during all of which time the agents were commanding the defendant to put into shore and were discussing with the defendants their identity and giving their commands.

That after the said last shots were fired the defendant Chambers broke out another window in the cabin and held up his wounded leg and yelled, "Don't shoot any more, I am bleeding to death. Take me to a hospital." Thereupon, defendant Fredericks went in the pilot-house, threw in the clutch and brought the boat to the bank. That the said Hanson was acting with and under the direction of the said agents and was assisting them. That immediately when the boat came to the shore this affiant and his companions went aboard, at which time Agent Linville had in one hand his pistol and in the other hand the search-warrant, a copy of which is hereto attached and marked Exhibit "A." That the said Linville and all of the said agents gave their first attention to Chambers, the wounded man. That immediately upon boarding the boat this affiant and his companions observed the firearms mentioned in the defendant's affidavits, lying on top of the liquor and in the pilot-house; that after a few minutes the agents with the defendants proceeded in the boat to the dock at Stanwood where they tied up and Agent Linville took defendant Chambers off the boat to a hospital, at which time it was but 6 P. M. That after Linville had left with the said Chambers this affiant in company with Agent Griffith saw the search-warrant lying on the compass-box in the cabin. [75]

This affiant especially denies that there were 235 cases of whiskey and 8 cases of gin on this boat, but alleged the fact to be that there were 219 sacks of whiskey of various brands and 32 packages containing 6 bottles each of gin.

This affiant specially denies that the command, "We know who you are; stop, or we'll kill you," was given by any of the said officers to the defendants.

This affiant admits that the said boat and its equipment, together with the cargo of liquor, was taken into custody by the said Prohibition Agents and is now in the custody of the said Prohibition Director in the said City of Seattle, and the seizure has been reported to the Federal Prohibition Commissioner at Washington, D. C.; that the equipment on said boat alleged in the affidavits of defendants is substantially correct, there only being, however, two army blankets.

This affiant admits that a complaint was filed before Commissioner R. W. McClelland charging the said defendants with violation of the National Prohibition Act, and that the said defendants were indicted later by a Federal grand jury, and admits that an application and affidavit for search-warrant were filed on or about September 27, 1922, before R. W. McClelland, United States Commissioner, and a search-warrant issued for the said gas boat "Dragon," based upon the said affidavit, and further admits that a demand was made for the return of the property seized.

(Signed) WALTER M. JUSTI.

(Subscribed and sworn to, etc.)

Attached as Exhibit "A" to foregoing affidavit is a copy of the application and affidavit for search-warrant contained in the affidavit of Joseph Fredericks and Clarence Chambers heretofore set out. [76]

(Caption omitted.)

S. C. LINVILLE, being first duly sworn, upon oath deposes and says: That at all times herein mentioned he was and now is a Federal Prohibition Agent, having been such for more than six months last past. That he has read the affidavit of Walter M. Justi herein and knows the contents thereof. That he was one of the arresting officers mentioned in said affidavit. That in particular does this affiant state that he saw the gunny-sacks of liquor piled in the cabin, through an open window on the right-hand side of the cabin, a considerable and appreciable time and while the gas boat "Dragon" was traveling at least the distance of fifty feet before this affiant or any of his fellow-officers arose from behind the dike to stop said boat or to arrest the defendants or either of them. That this affiant is familiar with liquor sacks and containers and knows from actual experience the kind of sacks and their appearance, which contain intoxicating liquor. That the sacks which this affiant observed through the cabin window of said boat before any arrest was made, were the kind of sacks used to contain liquor and this affiant firmly believed that the said sacks did contain intoxicating liquor. That before either this affiant or any of his

companions boarded the said boat this affiant saw through an open door between the pilot-house and the cabin, a large number of gunny-sacks containing intoxicating liquor and that the outlines of the bottles were plainly visible to this affiant through said sacks. That neither this affiant nor any of his companions commanded said gas boat to stop or attempted an arrest or search of said defendants or the boat, until after they had seen and observed that the said boat was loaded with intoxicating liquor and not until after they had seen that the cabin of said boat was practically filled with sacks of liquor. [77] That this affiant has read the affidavit of the defendants herein, knows the contents thereof and denies each and every allegation therein contained excepting only in so far as the same may be admitted or stated in the affidavit of Walter M. Justi herein. That the affidavit of said Walter M. Justi is substantially true and correct as this affiant verily believes, therefore adopts the statements therein contained to the same extent as if herein fully set forth.

(Signed) S. C. LINVILLE.

(Subscribed and sworn to, etc.)

(Caption omitted.)

WM. J. GRIFFITH, being first duly sworn, on oath deposes and says: That at all times herein mentioned he was and now is a Federal Prohibition Agent for the State of Washington, and has been since March 1, 1922.

That he has read the affidavit of Walter M. Justi herein, knows the contents thereof and believes the same to be true, and adopts the statements therein contained as his own to the same extent as if fully set forth herein.

That especially does this affiant state that before any command was given to the defendants, or either of them, to stop the boat or to bring the boat into shore he plainly and clearly saw through an open cabin window the said sacks of liquor with the outlines of the bottles therein, in the cabin of said gas boat "Dragon." That this affiant knows the type of sacks which contain liquor and in which liquor is imported or shipped and before this affiant acted in this instance he was firmly convinced that the said large number of sacks which he saw piled in the cabin of the said gas boat "Dragon" contained intoxicating liquor.

(Signed) WM. J. GRIFFITH.

(Subscribed and sworn to, etc.) [78]

(Caption omitted.)

OSCAR HANSON, being first duly sworn, upon oath deposes and says: That he is a resident and has been, for a number of years, of Stanwood, Washington, and at all times herein mentioned was and now is an American citizen. That he has read the affidavit of Walter M. Justi herein and notes the contents thereof. That the statements in said affidavit in so far as they bear upon matters within this affiant is alleged to be present, are substantially true and are hereby adopted by this affiant. That

this affiant as stated in said affidavit was stationed behind the dyke near Stanwood as said gas boat "Dragon" appeared. That when the gas boat was some distance away from where the agents were stationed and approaching said position this affiant saw that one of the windows of the cabin on the right-hand side was lowered the full length and through this window this affiant personally observed clearly and plainly a large number of gunny-sacks piled in the cabin which gunny-sacks this affiant believed contained liquor and are the kind that this affiant has seen liquor in heretofore. That he observed these gunny-sacks and they were also observable by the agents an appreciable time before Agent Linville or any other agent arose from behind the said dyke and commanded said boat to stop. That said officers did disclose their identity not only once but many times to the defendants and in a loud tone of voice and that the time of day was not later than 5:45 P. M. while it was still very light.

(Signed) OSCAR HANSON.

(Subscribed and sworn to, etc.) [79]

(Caption omitted.)

JOSEPH FREDERICKS, being first duly sworn, on oath deposes and says:

That he has read the affidavits of Walter M. Justi, Oscar Hanson, William J. Griffiths and S. C. Linville herein; that the said persons could not possibly have seen what was inside of the cabin; that all of the blinds were down; that all of the liquor was

concealed in gunny-sacks, none of which were piled above the windows of said cabin as claimed in the affidavit of said Justi; that there was nothing peculiar about the said sacks which were ordinary burlap and tied and sewed in no different manner from any other gunny-sacks; that the door between the pilot-house and the cabin was shut and not opened until after the agents attempted to stop the said boat, at the time when defendant Chambers came into the engine-room to try and start the engine again so as to bring the boat to the bank in compliance with the commands of the armed men, who were then threatening to kill the defendants, and whose identity was at that time unknown to the defendants.

That the statements that persons on the bank told them they were prohibition agents or had a search-warrant or were placing them under arrest was false and untrue.

That the statement that the said Chambers attempted to speed up the boat is false and untrue, as is also the statement that any agent fired a shot across the bow before firing into the boat; that all of the shots were directed into the boat and apparently for the purpose of killing affiant and his codefendant.

That affiant did not stick his head out of the window of the stern of the boat as claimed in the affidavit of the said Justi, but after the shooting began lay on the bottom of the boat expecting every minute to be killed. [80]

That practically no time elapsed between the time that the said Chambers stepped back from the

pilot-house into the cabin when the shooting began; that after the said Chambers was shot, he attempted to assist him in stopping the loss of blood; that the statement that the said Chambers broke out a window and held out his wounded leg and yelled, "Don't shoot me. I'm bleeding to death. Take me to a hospital," is absolutely false and untrue.

That the statement that Agent Linville had in one hand his pistol and in the other a search-warrant is false and untrue. That affiant called out to the men on the bank to stop shooting, that he would bring the boat in after the said Chambers was shot, and that he stepped into the pilot-house and all the men on the bank were levelling guns directed at him and commanding him to throw out a line; that he called to the men on the bank to permit him to come outside without shooting him and he would comply with the order; that he then brought the boat to the bank and the said Linville came to the boat with a gun in one hand and a revolver in the other, but had absolutely no search-warrant or any other document; that affiant remembers this particularly because he attempted to help the said Linville up on the deck of the boat, which was several feet above the edge of the river bank, but the said Linville pulled out of his hand evidently thinking he was attempting to take the rifle from him, whereas he was merely attempting to help him board the boat; in the meanwhile all of the other agents had their guns pointed at him.

That the statement that there were firearms lying on the top of the liquor in said boat is false and untrue.

That after they landed at the dock in the town of Stanwood, the said Linville took the defendant Chambers up to a hospital; that during all the time the said Chambers was away, [81] he was held in the cabin under the guard of the said William M. Justi and was not at any time in the pilot-house and never saw or heard of any search-warrant at any time until he heard the said Agent Linville testify in the United States Commissioner's Court on preliminary hearing that he had a search-warrant in his pocket and at that time the said Linville made no claim to have shown or exhibited it to anybody.

(Signed) JOSEPH FREDERICKS.

(Subscribed and sworn, etc.)

(Caption omitted.)

CLARENCE CHAMBERS, being first duly sworn, on oath deposes and says:

That he has read the affidavit of Walter M. Justi, herein; that the statement contained in said affidavit that the gunny-sacks in said launch could be seen is false and untrue, as they were piled wholly in the cabin of said launch, the windows and blinds of which were down preventing anyone from seeing what was in said launch; that furthermore the said gunny-sacks were the ordinary burlap gunny-sacks and were sewed and tied in no peculiar manner but in the same way that all gunny-sacks that are tied are sewed and tied.

That the statement that the sacks were piled above the ledges of the windows of said cabin is false and untrue; that the outlines of any bottles were visible through the said gunny-sacks was false and untrue; that the door from the pilot-house to the cabin was closed until after the said agents began shooting at affiant so that the statement that the gunny-sacks could be seen through said open door is false and untrue.

Affiant denies that the agents at any time prior to their coming aboard the boat announced that they were Federal [82] prohibition agents or that they had a search-warrant for the boat or that the defendants were under arrest; that if the agents had badges pinned on their coats, affiant could not see them and thought at the time that the men were not officers but hold-up men.

That the statement in the affidavit of said Justi that affiant "increased" the speed of said boat and attempted to speed ahead, that thereupon Agent Linville fired a shot across and in front of the bow of the boat and into the water, and not at the defendants, or either of them, and each and every one of the said officers yelled in a loud tone of voice, "We are Federal Prohibition Agents. Stop that boat. You are under arrest," is all false and untrue; that at no time did affiant attempt to increase the speed of said boat after he heard the shouts from the bank; that agent Linville did not fire a shot across the bow in front of said boat and no persons on the bank announced that they were Federal Prohibition agents or that the defendants were under arrest; that as heretofore stated, at

no time until after the agents had come aboard the said boat and begun their search thereof, did any one of them announce that they were Federal Prohibition Agents, and at no time were the defendants ever advised that they claimed to have any search-warrant for the said boat.

That the statement in said affidavit that affiant was commanded not to leave the pilot-house was false and untrue; that in attempting to stop the boat affiant killed the engine and attempted to go into the engine-room to start it again when he was fired on and seriously wounded in the leg by bullets from the guns of the agents; that affiant at no time attempted or had in mind any resistance to the attacking party.

That since filing his first affidavit herein, affiant [83] has ascertained that the shooting took place about two thousand (2,000) feet below the dock at Stanwood and outside the corporate limits thereof.

That the statement that three (3) minutes elapsed from the time affiant threw out the clutch and the time the agents shot into the boat at affiant is false and untrue; that he was shot at just a few seconds after stepping into the cabin.

That the statement in said affidavit that he broke out a window in the cabin and held up his wounded leg and yelled, "Don't shoot any more. I'll bleed to death. Take me to a hospital," is false and untrue and that on the contrary, he huddled down in the engine-room, expecting any moment to be killed.

That the statement that there were firearms lying on the top of the liquor is false and untrue.

Affiant especially denies that "Exhibit A," which is an application and affidavit for a search-warrant, was ever exhibited to him, or that any reference to any search-warrant was ever made at any time.

That he has read the affidavits of Oscar Hanson, S. C. Linville and William J. Griffiths, which are merely reaffirmations of the statement contained in the affidavit of Walter Justi, and that his denials apply as well to the statement therein contained.

(Signed) CLARENCE CHAMBERS.

(Subscribed and sworn to, etc.)

(Caption omitted.)

GEORGE R. MYRON, being first duly sworn, on oath deposes and says:

That he is now and for a period of more than twelve (12) years last past has been a resident of Snohomish County, Washington; that he is and for some time past has been engaged in [84] farming near the City of Stanwood, in said county and State.

That on the 4th day of October, 1922, between 5:30 and six o'clock in the evening, affiant was on the farm of his brother-in-law, Martin M. Leque, where he was assisting his brother-in-law and his hired man, Eric Sederstrom, in handling baled straw on the said Leque's farm, and were working near the entrance to a barn on the river bank about one hundred (100) yards from where the launch "Dragon" was shot at, when his attention was attracted by the sight of the launch "Dragon" coming slowly up the Stillaguamish River, when affiant

suddenly heard someone call out in a loud voice, "You ——, bring that boat back. We know who you are." (The omitted language in the foregoing statement was of such highly profane and obscene character, affiant omits to state it.) That immediately there followed a rifle shot and affiant saw five (5) men appear on the top of the dike on the opposite side of the river with guns in their hands, which they immediately levelled at the launch and fired; at the time this volley was fired the launch was practically at a standstill and immediately thereafter was brought onto the bank and men on the bank boarded it.

That affiant could plainly see and hear everything that occurred from the time that he first saw the launch until the men behind the dike boarded the boat; that at no time did the men on the bank state that they were prohibition officers or law enforcement officers of any kind, nor did they state that they had any search-warrant, nor did they display any badges, but kept cursing and abusing the persons aboard the launch and threatening to kill them; that not less than ten (10) shots were fired by the men on the bank but that no attempt at resistance was made by the men on the launch.

That affiant has read that portion of the affidavit of [85] William M. Justi herein, in which he states that one of the agents named Linville immediately when the boat came to the shore had in one hand his pistol and in the other a search-warrant; that affiant at all times had a plain view and that while he does not know the names of the agents, he saw a large man first to approach the

boat and board it and that he held in one hand a rifle and in the other a pistol; that he had nothing else in his hands; and that affiant saw one of the men on the boat help him get aboard of the launch; that affiant was unable to see what was being carried in said launch.

Affiant further says that he saw no badges on the men who stood on the bank and shot at the board; that during the whole of the occurrence, affiant never had any intimation that the parties doing the shooting were officers of the law but from the foul and profane language used believed at the time that it was a party of drunken hunters who had fallen into a row.

That affiant is satisfied in his own mind that all curtains on the said launch were down and that it was impossible from either bank to determine what was inside of said launch; that affiant was paying particular attention to the affair because the shots were directly in line with the home of his brother-in-law, wherein the family of his brother-in-law were, and that affiant feared that the shooting might endanger the lives of said family; and that the shooting seemed to affiant to be without warning or excuse; and at the time he had intended to have the persons participating therein prosecuted.

(Signed) GEO. R. MYRON.

(Subscribed and sworn to, etc.)

(Caption omitted.)

MARTIN N. LEQUE, being first duly sworn, on his oath [86] deposes and says:

That he is an American citizen and that at all the times herein mentioned and for many years prior thereto, he is and has been engaged in farming on a farm near the City of Stanwood, Snohomish County, Washington, said farm being situated on the north bank of the Stillaguamish River in said County and State.

That he has read the affidavit of George R. Myron herein, knows the contents thereof and believes it to be true, and hereby adopts the statements therein contained as his own to the same extent as if fully set forth herein.

Affiant further states that his residence is but a short distance from the bank of said river and was directly in line of fire of the party of armed men who conducted the shooting aforesaid; that not only was his said house within range and line of fire of said men, but that the foul and vile profanity used by said men was easily heard at his said house wherein were affiant's wife and small children.

Affiant further states that to the best of his knowledge and belief all curtains were down on said launch and that it was impossible from either bank to determine the character of the freight she was carrying; that affiant had a plain view of the launch and the persons stopping the same, and that the men on the bank made no reference to a search-warrant or that they were officers nor

did any of them exhibit any paper before boarding the launch.

(Signed) MARTIN N. LEQUE.

(Subscribed and sworn to, etc.)

(Caption omitted.)

ERIC SEDERSTROM, being first duly sworn, on his oath deposes and says: [87]

That he has been a resident of the city of Stanwood for about eighteen (18) years last past, and that during all the times herein mentioned he was engaged as a farm-hand on the farm of Martin S. Leque near the city of Stanwood, Snohomish County, Washington.

That he has read the affidavits of George R. Myron and Martin N. Leque herein, knows the contents thereof and believes the same to be true; that at the time set forth in said affidavit he was driving a load of straw and was in the act of approaching the barn on said farm, to which he was hauling said straw, and that at said time he was very near to where Leque and Myron were standing on the river bank, that affiant hereby adopts the statement contained in the affidavits of George R. Myron and Martin N. Leque, respectively as his own to the same extent as if fully set forth herein.

Affiant especially states that he at no time heard any of the men on the opposite bank of the river make any mention of being officers of the law or of having any search-warrant whatsoever, nor did they exhibit any paper but that, on the contrary, it appeared to affiant as though said shooting party were bandits or the like; that the language used

by said men in a loud voice was foul and indecent; that the contents of said launch was not visible to persons on shore.

(Signed) ERIC SEDERSTROM.

(Subscribed and sworn to, etc.)

J. W. REYNOLDS, GEORGE J. KETCHUM, L. P. HANSON and C. W. BROXAW, in a joint affidavit, all depose that they were residents of Stanwood, Washington; that on the 29th day of November, 1922, in company with Federal Prohibition Agents Justi and Linville, they made an examination of the place at which the "Dragon" was seized on October 4, 1922; and measured [88] the distance where Martin N. Leque, George R. Myron and Eric Sederstrom were in and that it was seven hundred twenty (720) feet away from the place where the said launch was seized and it would be impossible for any person or persons to see distinctly any object aboard the boat, such as curtain, blind or window, open or shut, or to hear any conversation clearly at such distance, or to see and be able to state that there were no badges worn by the officers; that it would be utterly impossible for persons from the position at which Leque and the others were, to see and determine whether or not the blinds were drawn; that the residence of Leque was not in the line of fire by 340 feet; that the locations of the officers during the occurrence were not known by the affiants by their own knowledge but merely as stated by the officers.

(Caption omitted.)

WALTER M. JUSTI and S. C. LINVILLE, being each first duly sworn on oath, deposes and says, each for himself, and not one for the other, that they have read the affidavits of George R. Myron, Martin N. Leque and Erick Sederstrom, and the reply affidavits of Clarence Chambers and Joseph Fredericks; that he denies the statements contained in the affidavits of said Myron, Leque and Sederstrom, as more fully set forth in the affidavit in chief of this affiant.

That replying especially to the affidavit of said Chambers, this affiant denies that in attempting to stop the boat the said Chambers killed the engine and alleges the fact to be that at no time was the engine killed or stopped until the officers tied up the boat at the City Dock in Stanwood, Washington, between twenty and thirty minutes after the first command to halt the boat was made.

That replying particularly to the affidavit of said [89] Fredericks, this affiant denies that the said Fredericks helped or attempted to help the said Linville to get aboard the boat.

That answering especially the affidavit of said Myron, this affiant states that by actual measurement with a tape the distance from the point where the boat was first commanded to halt and was fired upon, to the point where Myron, Leque and Sederstrom were working, was 700 feet, that the distance from the point where the officers boarded the "Dragon" to the place of said Myron was 725 feet.

That the said Stillaguamish River where the

shooting occurred, has dikes on each side some 8 or 10 feet high; that the place where Myron and his associates viewed the said incident was practically on a level with the top of the dike on the westerly side of the said river, while the said agents were on the easterly bank; that the distance between the dikes at this point is about 500 feet, and the said Myron and his companions were north from a line directly across stream, a distance of 350 feet; that at a distance of 700 feet it would have been impossible for the said Myron and his companions to see or clearly determine whether the windows on either side of the boat were opened or closed, or to see any gunny-sacks of liquor; that it would have been impossible for the said Myron and his companions to hear clearly what occurred.

That this affiant denies that the boat, when shot at, was in line with the residence or place of the said Leque but that the said residence or place of the said Leque was at least 500 feet from the line of firing, as the agents were shooting at an angle of more than 90 degrees away from the residence and place of the said Leque; this affiant further denies that there were five (5) men but states the fact to be that there were only four (4) men. [90]

That this affiant further alleges that the said George R. Myron, above referred to, stated to these affiants on November 29th, 1922, at his home in Stanwood, Washington, that he originally signed an affidavit brought to him by an attorney by the name of Peters; and some 4 or 5 days later said Peters returned to him (Myron) with another affi-

davit stating that he had been compelled to change the original affidavit to conform to certain legal requirements, as he understood, whereupon the said Myron inquired if it was the same affidavit that he had originally signed and was told that it was and that the said Myron stated he signed the last affidavit without reading it, and which affidavit is the one served by the defendants on the Government in said case; that when these affiants read to the said Myron the last affidavit signed by him, the said Myron stated that it contained different statement from the original affidavit and was not true to the facts and that the affidavit signed by the said Myron on behalf of the Government was in line with the truth and the occurrences on said October 4th, 1922.

That neither Myron, Leque or Sederstrom could observe from their positions the windows on the right side of the boat which was the side upon which the agents were located, but could see only the left side of the boat "Dragon" and the agents have never claimed that the windows on the left side of said "Dragon" were open.

That referring especially to the affidavit of Reynolds, Ketcham, Hanson and Brokaw, these affiants pointed out to the said Reynolds and others, including said Emil Matterand, on November 29th, 1922, the relative positions of the Agents, the river, the gas boat "Dragon," the said Myron and his companions, as they were on October 4th, 1922, at the time of the said capture; that the said Matterand is the owner of the land where [91] the

agents were and was present and heard and saw the occurrence on October 4th, 1922, and that the measurements of the said Reynolds and others, were based upon statements made by these affiants and the said Matterand.

(Signed) S. C. LINVILLE.
(Signed) WALTER M. JUSTI.

(Subscribed and sworn to, etc.)

(Caption omitted.)

E. O. MATTERAND, being first duly sworn, on oath deposes and says:

That he has been a resident of Stanwood for the past thirty years engaged in farming. That about 4:30 P. M. October 4th, 1922, Federal Agents, Griffith, Justi and Linville appeared on my place in Ford car driven by Oscar Hanson; the agents stated to me what they were after and together we all sat and talked regarding the boat "Dragon" which I saw lying down the river a short distance. About 5:15 P. M. the agents decided to take a position on the dyke and each and everyone took his badge and pinned it on the outside of their coat so that it could be plainly seen. This was done in my presence. I walked down to the dyke with the agents to the position they took up on the dyke. I stayed there with them until one of the Agents, Griffiths, remarked, "Here she comes," meaning the boat "Dragon." At this I walked towards the house behind the dyke, walking about 150 feet. I stopped and layed behind the dyke in a clump of bushes. The boat proceeded up the river towards the

officers. About the time the boat was opposite the officers I heard them, meaning the officers, shout, "Stop the boat; we are Federal officers," also to stand in the pilot-house, "bring that boat in," "don't move," "stay where you are," and "don't move," were some of the [92] remarks made by the officers. After the order of the officers to stop the boat that they were federal officers, I heard a shot and saw the water splash in front of the bow of the boat and in the water. Orders from the officers repeatedly were to bring her in to the bank, that they were federal officers and not to move, stand where you are, were repeated over and over again, two or three minutes after the first shot was fired which I saw strike the water in front of the bow of the boat, several shots were fired in a volley, not more than half a dozen shots in all. I could hear the engine running all the time and it never stopped at any time. The exhaust was out the side and could be heard clearly. This was about 6 P. M. or a little before. It was still light and objects could be clearly seen.

I have known the boat "Dragon" for several months and have noticed her plying the river about my place and after she was moored at my landing I have noticed her many times and never have I seen any blinds over the windows although there were some thin curtains over some of the windows which were parted in the middle and ties to each side at the bottom. I never found any blinds drawn on the windows at any time I ever saw the

boat, and could look into the boat through any of the windows.

On October 5, 1922, I personally visited the boat. I could see the sacks through the windows and it was piled higher than the bottom of the windows and to my judgment within two feet from the roof of the cabin. The forms of bottles could be clearly seen through the sacks.

(Signed) E. O. MATTERAND.

(Subscribed and sworn to, etc.)

(Caption omitted.)

GEORGE R. MYRON, being first duly sworn, on oath deposes and says: [93]

That he is now and for the period of more than twelve years past has been a resident of Snohomish County.

That referring to his affidavit regarding the seizure of the boat "Dragon" on October 4th, 1922, he wishes to state that he, George R. Myron, in company with M. N. Leque did not notice the boat "Dragon" or know that anything was going on until he heard one shot, at that they looked in the direction of the shot and saw the boat and men on the dike. I did not hear any voices or see any boat or know that any boat was around until the report of one shot was heard.

A short time after the shot was heard, two or three minutes I would say, I heard a volley of shots. I could not say how many shots I positively heard.

That I could tell whether or not the curtains were up on the boat or hear clearly all the conversation between the men on the bank and the boat was impossible due to the distance I was from the scene of action.

The man who first entered the boat had something in one hand which I could not clearly see but believe to be a revolver. The man on the boat was standing back by the pilot-house and did not assist the man in boarding the boat. This man climbed on the bow of the boat unassisted by anyone.

I heard the men on the bank say, "Stand where you are. Hold. Stand where you are and bring that boat in." But I could not hear clearly all that was said due to the distance I was from the boat.

(Signed) GEO. R. MYRON.

(Subscribed and sworn, etc.)

(Caption omitted.)

L. D. ANGEVINE, being first duly sworn, on oath deposes and says: [94]

That he is an American citizen and for the past year has been a resident of the town of Stanwood, County of Snohomish, engaged in publishing a newspaper ("The Stanwood News").

That he, on the night of October 4, 1922, in company with the arresting officers, investigated the boat "Dragon," which had been seized with a load of contraband liquor.

That he entered the launch through the pilot-house. From thence he passed through a door leading into the main part of the boat, which was

also the engine-room, and climbed over a pile of half or quarter sized gunny-sacks, which appeared to be filled with bottles judging by the shape and forms which could be distinguished through the sacks.

These sacks were piled against the wall and in front of the door leading from the pilot-house to the cabin and within, to the best of my judgment, two feet from the roof. It was easy to determine the forms of bottles through the burlap, and all of the sacks which I inspected bore tags bearing the inscription "For Export."

Beyond this was situated what I would call the main passenger cabin, which was filled with sacks of the same description as were piled next to the pilot-house.

Immediately to the rear of the pilot-house, just to the right of the door leading from the pilot-house, was a bunk, on top of several cases of liquor piled on top of the bunk, I saw three guns, namely, one high-powered .22 rifle, one .35–55 Winchester and one German Mauser with a convertible stock. These in my judgment, could be easily obtained by simply leaning over the pile of liquor directly in back of the pilot-house.

The liquor in the main or passenger cabin, as I might call it, was also piled within, to the best of my judgment, two [95] feet of the roof, and past the bottom of the windows. That the bottom of the windows, as I remember, were practically on a level with the deck.

It was evident to me at this time, from the surprise of the officers upon seeing the manner in which the boat was heavily loaded and from their remarks, that they had not been in that part of the boat previously to this time to make a search, as the remark was made that "we will give her a thorough search and see if they have any narcotics on board."

At all times I distinguished a strong smell throughout the boat. This odor I distinguished when approaching the boat, at a distance of at least 20 feet.

The cabin, to the best of my judgment, was not more than four and a half feet above the level of the deck.

(Signed) L. D. ANGEVINE.

(Subscribed and sworn to, etc.)

WILLIAM ROUSE, postmaster at Stanwood, and Dr. O. F. STARR, of Stanwood, Washington, each filed affidavits substantially the same as the foregoing affidavit of L. D. Angevine.

Thereupon the said motions were argued by counsel for the said defendants and the Government and at the conclusion of said arguments the Court took the matter under advisement and thereafter on the 7th day of December, 1922, filed the following written decision:

Opinion of Court Denying Motion to Quash and Return.

United States District Court, Western District of Washington, Northern Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH FREDERICKS, *alias* JOSEPH WATSON, and CLARENCE CHAMBERS, Defendants. [96]

DECISION.

The COURT.—The defendants were indicted for conspiring to violate the National Prohibition Act, also for importing from Canada into the United States 2628 bottles of whiskey and 92 bottles of gin, and for transporting this liquor, after importing it, and for possessing the same liquor; the liquor having been imported and transported in a gas screw boat known as the "Dragon," length 49 feet 8 inches, and beam 8 feet 2 inches.

The defendants have filed a motion to quash and for a return of the property on the ground that the liquor was secured by a search and seizure of the gas boat without authority, and in violation of the defendants' rights; that, no proper warrant was issued, nor a sufficient affidavit filed, and no search-warrant exhibited or return made, nor copies served, and many other irregularities in the execution of the warrant and return are set forth.

The issue is submitted upon affidavits by the defendants and on the part of the Government. It appears that on the 27th day of September, 1922, a search-warrant was obtained from the Court Commissioner in Seattle upon affidavit by a Federal Prohibition Agent. After securing the search-warrant the officers went to Stanwood and from the banks of the Stillaguamish River through a field-glass watched the boat on the afternoon in question and about three o'clock in the afternoon the boat came up the river approaching the point where the officers were stationed. The officers were concealed behind a dyke some eight or nine feet above the river. As the boat was approaching they saw it was heavily laden, and the officer saw

> "clearly and plainly piled in the cabin of said [97] boat a large number of gunny-sacks . . . the said gunny-sacks were of the same kind and dimension sewed and tied in the same manner, with two ears at one end, as are used to contain whiskey and intoxicating liquor; that, the said sacks were piled up above the ledges of the windows in the said cabin; that the outlines of the bottles were visible through the gunny-sacks . . . that, this affiant knows from experience the containers and sacks which he saw on board the Gas Boat 'Dragon' were sacks of intoxicating liquor." "The form of the bottles could be clearly seen through the sacks."

Another affiant states: The officers had been informed that the boat was heavily armed and that the operators had threatened to

> "Shoot and kill any officer who should interfere with them. . . . The officers did find in the cabin . . . two high-powered rifles, and one Mauser automatic convertible case gun and one similar Mauser gun in the pilot-house, each of the guns, except one high-powered rifle, being fully loaded with shells in the chambers ready for instant action."

The boat was hailed by the officers to stop. There is dispute as to what took place, the officers contending that the challenge to stop was disobeyed and that one of the defendants reached for what they believed to be a gun, and a shotgun was discharged into the gas tank to disable the boat, one shot of which struck a leg of one of the defendants. The defendants deny this and contend they stopped the engine.

THOMAS P. REVELLE and CHAS. E. ALLEN, Attorneys for the U. S.

CARKEEK, McDONALD, HARRIS & CORYELL, Attorneys for Defendants.

NETERER, D. J.—From the facts presented I do not think it necessary to enter into a discussion whether or not the basis for a search-warrant was sufficient, or whether the search-warrant was executed at all, or illegally executed. The knowledge which the officers had moved them to file an affidavit with the commissioner, which was deemed sufficient.

and this knowledge was supplemented by the appearance of the cargo and the conduct of the boat on the day of seizure, the conduct of the [98] defendants, the exposure of the form of the bottles in the gunny-sacks "in plain*t* sight," and on the proofs presented there is no question in my mind as to the liquor being in plain sight in the gunny-sacks usually employed for the transportation of liquors, and under the circumstances the officers were warranted in arresting the defendants, seizing the boat and the liquor thus exposed to view. This conclusion is clearly within the holding of the Circuit Court of Appeals of this Circuit, Vachina vs. U. S., 283 Fed. 35, and in harmony with the holding of the same Court in Lambert vs. U. S., 282 Fed. 413, and is in agreement with sound reason and weight of authority. The defendants' contention that curtains were drawn over the windows of the boat, thus hiding the liquor, is not sustained. The motion to suppress the liquor as evidence and to quash the indictment is denied.

(Signed) JEREMIAH NETERER,
Judge.

Whereupon, the Court having in accordance with said written decision entered an order overruling and denying defendants' motion to quash and for the return and suppression of said evidence, said defendants severally excepted to the order of the Court in denying and overruling each of said motions and the defendants' exceptions to said ruling of the Court were duly allowed.

BE IT FURTHER KNOWN that on the 8th day of February, 1923, the aforesaid defendants, having demurred to the aforesaid indictment, the same came on for argument on the 15th day of February, 1923, and at the conclusion of said arguments, the Court took the same under advisement and on the 24th day of January, 1923, filed a written decision herein as follows: [99]

United States District Court, for the Western District of Washington, Northern Division.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOSEPH FREDERICKS, *alias* JOSEPH WATSON, and CLARENCE CHAMBERS,
Defendants.

Decision.

THOMAS P. REVELLE, DeWITT EMORY, Attorneys for Plaintiff.

CARKEEK, McDONALD, HARRIS & CORYELL, Attorneys for Defendants.

NETERER, District Judge.—The defendants are charged in four counts, one with conspiracy to violate the provisions of the National Prohibition Act, two with importing intoxicants, three, with possession of intoxicants, four, with transporting liquor. The several offenses are alleged to have been committed on the same day, and all having relation to the same intoxicants, and the

transactions are all related. The defendants demur on the ground that several causes are improperly united, a felony and misdemeanor, and that the several counts are defective and uncertain for failure to allege the kind of intoxicating liquor, imported, etc.

The Court in U. S. vs. Vincent, Cause No. 6283, filed January 5, 1922, disposed of an identical issue against the contention of the defendant, citing Glass vs. U. S., 222 Fed. 773. That was a case tried before the writer and affirmed by the Court of Appeals in which the Court specifically held that a misdemeanor and felony may be joined. The other objections are equally unfounded. The demurrer is overruled.

(Signed) JEREMIAH NETERER,
Judge. [100]

Whereupon the Court entered an order denying said defendants' demurrer and said defendants severally excepted to the order of the Court in overruling said demurrer and the defendants' exceptions to said ruling of the Court was duly allowed.

BE IT FURTHER KNOWN that on the 20th day of February, 1923, at the hour of 3:30 o'clock P. M., the above-entitled cause came on regularly for trial in the above-entitled court before the Honorable Jeremiah Neterer, Judge thereof; the plaintiff appeared by DeWolfe Emory, Special Assistant United States Attorney for said district, the defendants being present in person and by their counsel, Carkeek, McDonald, Harris & Coryell, and John F. Dore, whereupon a jury being called, the

following came forward and answered to their names, as follows: Lee J. Priest, Ruby E. Brooks, Charles Stellar, Louis F. Swift, John J. High, Fred C. Phillips, W. H. Ford, Bert B. Griswold, John S. Riley, Andrew J. Stoors, James H. Pocock, Edgar Royer, whereupon Donald A. McDonald, one of the attorneys for defendants, proceeded to ask the first juror, Lee J. Priest, the following questions:

Q. If you were accepted on the jury, Mr. Priest, could the defendants rely upon you to vote for no verdict except what you thought was right irrespective of what the other jurymen did—

The COURT.—The question is not fair. Need not answer.

Q. —except as they might influence you by legitimate argument? The fact that seven or eight or even more of the other jurors would vote differently from what you thought was the right verdict would not influence you to vote that way?

The COURT.—That is not a fair question. What we want to find out is whether the jury knows anything about this [101] case, whether they are prejudiced, whether they have any preconceived notions about it; not what they would do under or upon a certain state of facts.

Mr. McDONALD.—I understand that on the *voir dire* counsel has a right to ask questions—

The COURT.—No. Proceed. We will not permit any question upon what jurors will do in the future upon any state of facts being established.

Mr. McDONALD.—Exception.

Whereupon the Court directed counsel for the defendants to address his general questions as to the qualifications of the jurors to the jury *en masse* and not to repeat the same to each individual juror. To this ruling defendants excepted and the said defendants' exceptions were fully allowed.

Whereupon the empanelling of the jury was proceeded with and after the exercise of the challenges of the respective parties, the jury was regularly and duly empanelled and sworn to try the cause and the special assistant United States attorney, having made a statement to the jury, the following evidence was thereupon offered:

Testimony of S. C. Linville, for the Government.

S. C. LINVILLE, a witness produced on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

My name is S. C. Linville and I am a Federal prohibition agent. I have been in that business two years. On the 4th of October, 1922, I participated in the seizure of the gas boat "Dragon." This took place at the south fork of the Stillaguamish River near Stanwood, Washington. There was about 219 cases of whiskey of six bottles each, and 16 cases of gin consisting of 6 bottles to a case. The defendants were on the [102] boat at the time.

I had occasion to watch the movement of the gas boat "Dragon" all that day. I first saw it about one o'clock, around noon, I was on the top of a silo on

(Testimony of S. C. Linville.)

Mr. Hanson's farm near Stanwood at the time. This farm is situated on the main or north fork of the river. When I saw the "Dragon" first, it was in Mud Bay, which is the mouth of the south channel. About one o'clock, I climbed up on top of this silo, which gave me a vision of practically the entire country and out in the mouth of the south channel called Mud Bay I sighted this boat. I saw her personally leave Stanwood Sunday, October 1st. Being quite a distance out there, I was unable to tell distinctly whether that was the boat or not and got a pair of glasses, about three in the afternoon, and with the aid of these glasses I was able to distinguish the boat as being the "Dragon." We watched her movements through the glasses and between three and four, possibly might have been half-past three or four, they picked up anchor from the present position in which they had been lying and moved around into the mouth of the south channel, a short distance inside to Snaggy Point. And at that time, we proceeded around by machine through East Stanwood down to a Mr. Matterand's place, who owns a farm on the east side of the south fork of the river. We arrived there about 4:30 and staid there quite a little while. We could see the boat down below tied up to some dolphins at Snaggy Point. We took a position down on the dike, where the channel of the South Fork of the Stillaguamish River comes very close into the bank. That is, it makes it necessary for a boat coming up there to come in very close to the

(Testimony of S. C. Linville.)

bank. Agents Justi, Griffith and myself and Oscar Hanson, who had piloted us around there with his car, took our positions at that point. About 5:30 as we [103] were all sitting there, the "Dragon" left her mooring and started to come up the river. When she got opposite us, we three agents rose up on the dike and called out that we were Federal agents,—to stop the boat,—that we had a search-warrant,—and for it to stand where it was. About that time the boat started to proceed ahead a little faster than it had been going. I might explain to you that the boat was a one man control. It is controlled from the pilot-house. The advance or retarding motion, to go ahead or to go neutral, may be controlled from the pilot-house. As she started to advance ahead at greater speed, I fired a shot in front of the bow in the water and again ordered them to stop that boat and bring it to the bank. Then Mr. Chambers, who was piloting the boat, said, "Well, she has stopped." The boat was still moving slightly and I told him again to bring her into the bank so we could get on to it. That order was repeated by us a number of times. Finally the boat began drifting down. All this time as she came up, we could see through the windows the sacks containing liquor, the curtains were not drawn. In the middle they parted down. In the pilot-house there was a partition separating the engine-room from the pilot-house with a door in it. The liquor was piled up there so that this door could not be closed and left an opening. We could

(Testimony of S. C. Linville.)

see the liquor piled up in through it. We could distinguish the bottoms of the bottles through the burlap sacks. We could see that prior to the time that we gave the command to stop and told them who we were. In fact, we three agents saw these bottles a minute or two minutes before we arose from the dike.

Disregarding our orders to stand where he was at the time, Mr. Chambers darted through the door separating the engine-room from the pilot-house, leaving it open and we could see the [104] entire load at that time. At the same time that he jumped through there, Agent Justi fired a shotgun loaded with buckshot through the other door.

Q. (By Mr. EMORY.) At that time had you any reason to believe that the defendants' boat was armed?

Mr. McDONALD.—We object to that question.

The COURT.—Objection sustained.

The defendants disregarded the first shot fired across the bow. I would say that about three or four minutes elapsed between the first shot and the shot fired at Chambers. In the meantime the defendants argued with us. We were paying particular attention to defendant Chambers who was in the pilot-house. No effort was made at that time to bring the boat into the shore. After the shot was fired at Chambers we all laid down behind the dike. Rising on the dike, we again gave the order for them to come in and bring the boat to shore. Defendant Chambers then came out and said, "For Christ's sake, don't kill us." One of the men was

(Testimony of S. C. Linville.)

shot. At that time I was covering him with a revolver. I said, "We don't want to kill anyone." I don't know where Fredericks had been prior to that time. After Chambers was shot, I told Fredericks to bring the boat into the bank and he did. As I went down the bank I had a revolver in one hand and a search-warrant in the other. As the boat came on to the bank, I climbed on the bow still covering Fredericks with my revolver. I went over the bow and into the pilot-house. At the same time I covered Chambers. He was sitting in the rear of the boat on some sacks of liquor. As I got up there I saw he had no firearms with him. This took place at about 5:45 P. M. on October 4, 1922. [105]

Q. (By Mr. EMORY.) Is this one of the sacks of whiskey that was on the boat at that time?

Mr. McDONALD.—If your Honor pleases, we object to this evidence on the ground that it was seized in violation of the constitutional rights of the defendants. We desire to renew our motion heretofore made—

A. Yes, sir.

Mr. McDONALD.—Just a minute. I am addressing the Court.

The COURT.—Motion is denied. Objection is overruled. Exception noted.

Mr. McDONALD.—Exception.

Government's Exhibit No. 8 is a bottle of King George whiskey.

(Testimony of S. C. Linville.)

It is one of the bottles that came out of a sack taken from the launch "Dragon." Government's Exhibits 1, 2 and 3 are also bottles of whiskey taken from the boat "Dragon" at the time of seizure and initialed by me on October 6th, after the boat had been brought to Seattle. That is likewise true as to Government's 4, 5, 6, 7 and 10, all being bottles of whiskey taken from the boat "Dragon" and turned over by me, after being initialed, to Mr. Kline of the Federal Prohibition Department in Seattle, who took charge of them. I saw the "Dragon" on Sunday, October the 1st, proceeding down the north channel in the afternoon, leaving Stanwood. I was duck hunting at the time. I cannot say how many men were on her.

Cross-examination.

I cannot say exactly what time on Sunday I saw this boat but to my best judgment I would say about three o'clock. I came to Stanwood September 25th or 26th. I went duck hunting on Sunday the 1st about 6:30 in the morning. Agents Regan and Stetson and two of the Hanson boys were with me in the afternoon when I saw the boat. When I first saw the boat that day she was [106] coming down from Stanwood out of the north channel about one o'clock. I was about four or five hundred yards from the boat and had it under observation for about thirty minutes. I did not see it again until October the 4th about one o'clock. When I first saw it, it was lying at anchor in Mud

(Testimony of S. C. Linville.)

Bay, which is about a mile from Stanwood. I cannot say whether it was stuck on the mud flats there or not but I know it was anchored. At that time I could not see any persons on the boat. Between three and four o'clock that afternoon, through a pair of glasses, we noticed someone on the bow of the boat lifting an anchor. Between the time that I first saw the boat up until between three and four o'clock, it was in one position, then it moved in toward the south fork of the Stillaguamish River toward Stanwood. Agents Justi, Griffith, Oscar Hanson and his brother were with me. The boat tied up at Snaggy Point, which is about half a mile from Stanwood. She lay there tied up at some dolphins until a little after 4:30 when she left that mooring and came up the south fork of the river very slowly toward Stanwood. In the meantime, we were lying behind the dike. All the time from the time we saw the boat until it came up opposite to us, except for the periods I have mentioned when it was anchored or moored, it was moving toward Stanwood. The place where we lay behind the dike was about a thousand feet from Stanwood. From dike to dike the channel there is about five hundred feet wide. At low tide there is very little navigable water. At high tide this varies, but at the place where we were behind the dike the channel was very narrow—ran very close to the dike,—practically right up into the bank. The tide was running out at the rate of about five miles an hour. The river has quite a current on an

(Testimony of S. C. Linville.)

ebb tide. The boat was proceeding up the river, possibly as slowly as five or six miles an hour. I would think it was about a [107] thousand feet from where the boat was tied up at Snaggy Point to where we lay behind the dike. I was in charge of the party. When the boat got opposite me, I raised up and stated that we were Federal officers and to stop the boat and we had a search-warrant for it. Agents Justi and Griffith also rose from behind the dike. They were armed with riot shotguns. I had a revolver in my holster. Agent Justi shot defendant Chambers. At the time the boat was drifting down, the engine was running on the boat, the clutch was out, but the boat was still moving, slightly drifting down the stream. I never fired into the boat personally. Agents Justi and Griffith each fired one shot into the boat.

Q. (By Mr. McDONALD.) The launch was riddled with bullets, wasn't it? A. No, sir.

The COURT.—What is the purpose of this, Mr. McDonald?

Mr. McDONALD.—I want him to detail the occurrence there. I want to test this man's accuracy of what took place.

The COURT.—We are trying one issue here. We are not engaged in exploiting anyone else. That has not any materiality here. I have been pretty liberal here, but I don't want to lose sight of the issue.

Mr. McDONALD.—Under the decision of the Supreme Court.

(Testimony of S. C. Linville.)

The COURT.—I have been pretty liberal in the cross-examination. I don't want to lose sight of the issue here.

Mr. McDONALD.—Under the decision of the Supreme Court in the 65th Law Edition,—your Honor is familiar with that case,—I have a right to present again the question of the unlawfulness of this search and seizure.

The COURT.—That is not the issue here. That has been disposed of.

Mr. McDONALD.—Your Honor will recall that the *Supreme* [108] *held* that irrespective of the fact that it had been raised before the trial of that case, counsel has a right to renew it and pursue that investigation.

The COURT.—No, we are not going into that again.

Mr. McDONALD.—Your Honor will allow me an exception.

The COURT.—Oh, yes.

Before the boat was stopped, I saw the sacks and could see the contour of the bottles.

Q. I will ask you if at the hearing before Judge McClelland on or about the 10th day of last October,—you stated you were a witness there,—if you were not asked these questions and gave these answers:

"Q. The boat has a cabin on it, had it?

A. Yes, a cabin practically the whole length of it, with the exception of a few feet at the bow.

(Testimony of S. C. Linville.)

Q. Any curtains on the windows?

A. Yes, at some of them there were curtains.

Q. And at some there were no curtains?

A. At some of them the curtains were pulled aside a little.

Q. All you saw was sacks?

A. Well, from experience with the liquor traffic, why it was very easy to distinguish that it was a sack of liquor and not potatoes.

Q. That is not exactly answering my question. I say what you saw was sacks?

A. Yes.

Q. Those were ordinary gunny-sacks, were they? A. Yes."

Q. In the examination you were asked these questions:

"Q. When was it that you saw these sacks first that you mentioned? [109]

A. Why, shortly before the boat was ordered to stop.

Q. About how long?

A. Oh, as soon as she came in view we could readily see it.

Q. They were ordinary gunny-sacks?

A. Yes, well, it was ordinary burlap."

Mr. McDONALD.—You were asked those questions and gave those answers? A. Yes, sir.

Q. You never mentioned anything about seeing the forms of the bottles.

A. I said through experience as prohibition officers—

(Testimony of S. C. Linville.)

Q. I read that question. That is all that you stated at that trial? A. Yes, sir.

At the time I started down the dike, I had a search-warrant in one hand and a revolver in the other.

Q. (By Mr. McDONALD.) At the trial of this matter before Judge McClelland, I will ask you if these questions were not asked and you gave these answers:

"Q. Now, you say that you had a search-warrant? A. Yes, sir.

Q. Who had it? A. I had it.

Q. What did you do with it?

A. Left it in the pilot-house of the boat."

Mr. EMORY.—I object to that as not proper cross-examination.

The COURT.—Objection sustained.

Mr. McDONALD.—Now, if you Honor please, I propose to show that this witness testified at that hearing that he had the search-warrant in his overcoat pocket and never did exhibit it to these men. [110]

The COURT.—Ask him that question.

Q. I will ask you if you did not testify at that hearing substantially this: That Agent Regan had this search-warrant and left the night before this occurrence and gave you, I don't know whether a copy or the original,—and at the time of this occurrence you had it in your overcoat pocket, and at no time did you exhibit it or take it out of your pocket until you had taken this man to the hospital

(Testimony of S. C. Linville.)

and came back and in the absence of Mr. Fredericks left it in the compass-box.

A. I believe I stated at that hearing I left that search-warrant in the compass-box after coming back from the hospital; that I had it in my pocket as I came on the bow of the boat. I replaced it in my pocket, if I remember correctly.

Q. Do you want to tell the jury that you testified to that before Commissioner McClelland.

A. Something like that. I don't believe anything was mentioned—

Q. I have a transcript of what you testified to.

A. I did not show the search-warrant to either of the defendants. I will admit that.

Q. That is not the purpose of it. I want to show exactly what you did state.

Mr. McDONALD.—This is very short,—just a few questions and answers. I should like to ask him.

The COURT.—It is not material. If he had not testified to that in direct, I would not have permitted you to have asked him about seeing the form of the bottles through the window.

Q. I asked you this question:

"Q. Are you positive that you announced that you had a search-warrant when you first hailed the boat?

A. Yes, I told them I had a search-warrant.

Q. It was in your pocket at the time? [111]

A. Yes, sir, I wasn't taking it out and waving it at that time.

(Testimony of S. C. Linville.)

Q. You did not wave it at them?

A. No, sir.

Q. At no time? A. No, sir."

Q. Were you asked those questions and did you give those answers? A. Yes, sir.

The boat was proceeding toward Stanwood. The town was about a thousand feet away. I understand that the river can be navigated an appreciable distance beyond Stanwood.

Redirect Examination.

The "Dragon" was tied up between thirty and forty-five minutes at Snaggy Point leaving there about 5:30, just before the seizure.

Testimony of Walter M. Justi, for the Government.

WALTER M. JUSTI, a witness produced on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

My name is Walter M. Justi. I am a Federal prohibition agent, engaged in that capacity about seventeen months. On the 4th day of October, 1922, I participated in the seizure of the launch "Dragon" in the south fork of the Stillaguamish River near Stanwood, at about 5:45. This was at a point about a thousand feet from Stanwood. The defendants were on the boat at the time. The man sitting on the left of the bailiff is Chambers and the one further end of the row is Fredericks. About 219 sacks of various kinds of Scotch and

(Testimony of Walter M. Justi.)

American Whiskies and 32 sacks of Gordon gin, containing six bottles to the sack, were seized on the boat. Chambers was in the pilot-house when I first saw him, but at the time of the seizure he was in the cabin back of the pilot-house. The first time I saw the defendant [112] Fredericks was when he opened the window in the rear of the boat and put his head out and then slammed the window back. The next time was when he came into the pilot-house to take control of the boat and bring her into the shore. I first saw the "Dragon" on the 4th of October about three o'clock lying in the south channel of the river. I was on top of a silo on Hanson's farm on the north channel. We kept the boat under surveillance until we started up from the Hanson farm up to the east bank of the river where we lay behind a dike. That took about fifteen or twenty minutes, to go that distance. And during that time the boat was not under our view. I could not distinguish any people on the "Dragon" when I first saw it but later I saw persons raising an anchor. When I got to the Matterand farm, she was up at a point called Snaggy Point, where she anchored about four o'clock. She stayed there until about 5:30, when it came up the channel of the south fork toward Stanwood. It was seized about a quarter of six. The defendant Chambers was piloting the boat just before the seizure. Fredericks told me that at that time he was cooking some bacon and eggs in the galley, which was in the stern of the boat.

(Testimony of Walter M. Justi.)

Cross-examination.

Chambers was in the pilot-house of the "Dragon" when I first saw him. He was piloting the boat up the river. When I got on the boat, he was sitting on some sacks with his leg halfway out of the window. Every time I saw the boat when it was moving, it was moving toward Stanwood except at the time we halted her, she was drifting down the river away from Stanwood. The seizure took place approximately a thousand feet from the Stanwood dock. The river runs up above Stanwood a short distance. I don't know just where it ends. When the boat came up the channel about opposite where we were behind [113] the dike, we rose to the top of the dike and Agent Linville ordered the boat to stop saying, "We are Federal officers, stop that boat, we have a search warrant." Instead of stopping, the boat slightly increased its speed forward. Agent Linville fired a shot in front of the bow into the water at the same time repeated his command to stop. The boat finally stopped and Chambers said, "She is stopped now." We said, "Bring her into the bank." All the time we ordered them to stand where they were but the boat began to drift in the stream. It didn't drift very far. We walked down the dike to keep abreast of it, after repeating the caution to bring her into the shore. The defendant Chambers jumped through the door leading into the cabin back of the pilot-house. That is the first time that the shots were fired and then Fredericks called out,

(Testimony of Walter M. Justi.)

"Don't shoot any more," and Chambers said "I am shot; I am bleeding to death." The boat was drifting at the time the shooting took place.

Redirect Examination.

Q. (By Mr. EMORY.) One further question: Were there any arms on board the boat?

Mr. DORE.—Objected to as incompetent, irrelevant and immaterial.

The COURT.—Objection sustained.

Mr. EMORY.—Oh, I think counsel has brought out the question of the shooting and we have a right to show that they had the rifle on the boat.

The COURT.—We have already shown it.

Testimony of W. J. Griffith, for the Government.

W. J. GRIFFITH, witness produced on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

My name is W. J. Griffith. I am prohibition agent and have been for a year. I participated in the seizure of [114] boat "Dragon" on October 4th, 1922, which took place about a thousand feet below Stanwood on the Stillaguamish River on the south branch thereof. The defendants were on the boat at the time. There were about 235 cases of whiskey and gin on the boat, I should think. I first saw the "Dragon" on the 4th of October about 4:30 at which time she was moored at some piles at Snaggy Point. I was behind the

(Testimony of W. J. Griffith.)

dike on Mr. Matterand's ranch. I had the boat under observation from that time until the seizure. When I first saw the "Dragon" I don't know whether there were any people on her or not. She was about a quarter of a mile or maybe a half a mile from where I was. About 5:30 she started up the south channel of the Staillaguamish River and got opposite where I was about 5:45. Agents Linville and Justi and Oscar Hanson, civilian, were with me at the time.

Q. (By Mr. EMORY.) Did you find any arms on the "Dragon" at that time?

Mr. McDONALD.—I object to that, your Honor, as already ruled upon by your Honor.

The COURT.—He may answer this question.

Mr. McDONALD.—Exception.

There were two Mauser automatic pistols with convertible stocks so that they could be converted into short rifles and two rifles. They were all loaded except the 38–55 rifle. The Mauser was on the pilot-house seat right by the steering wheel loaded and the others were in the bunk just back of the pilot-house door.

Mr. McDONALD.—Your Honor, will allow us an exception to all these questions so that we will not have to be continually repeating them.

The COURT.—I want you to record all your objections.

The same objection will stand to all this line of questioning. [115]

(Testimony of W. J. Griffith.)

Cross-examination.

The dike I mentioned is, I should judge, about six feet high. It holds the river off the adjoining farm land. The seizure took place shortly before six o'clock. At the time of the shooting, the boat was moving up stream in our direction. After it was ordered to halt, it went ahead a certain distance by its own momentum and then drifted about thirty feet down stream. We kept following it along the dike insisting that they bring the boat into the shore. There is quite a strong current at that point. With the exception of the time that I mentioned when it drifted, at all other times while under my observation it was proceeding toward Stanwood.

Testimony of Oscar W. Hanson, for the Government.

OSCAR W. HANSON, a witness produced on behalf of the Government, being duly sworn, testified as follows:

My full name is Oscar Hanson. I reside on my father's farm on the Stillaguamish river near Stanwood. I was present with Agents Griffith, Justi and Linville on the 4th of October when the launch "Dragon" was seized. The seizure took place pretty close to six o'clock. We were on the dike on Matterand's place. My father's farm is on the north channel and Matterand's farm is on the south channel. At the time of the seizure, the "Dragon" was proceeding north. Matterand's

(Testimony of Oscar W. Hanson.)

farm is on the east side of the channel. The seizure took place about a half or three quarters of a mile below the town of Stanwood. The defendants were on the "Dragon" at the time of the seizure. There were quite a number of sacks of liquor on the boat. I did not count them but the boat was pretty well loaded down with liquor. I have lived on my father's farm there between twelve and thirteen years. I saw the "Dragon" during the month of September. I saw [116] one of the defendants on the "Dragon" before the day in question. It was Mr. Fredericks. I saw him on the boat somewhere around the first part of September. I saw the "Dragon" on the 1st of October. She came out of the north channel and went west towards the sound. This was on the afternoon of Sunday the 1st, I should judge about three o'clock.

Testimony of Emil Olaf Matterand, for the Government.

EMIL OLAF MATTERAND, a witness produced on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

My name is Emil Olaf Matterand. I am a farmer. I own a farm on the south fork of the Stillaguamish river near Stanwood. I was present at the time of the seizure of the "Dragon" by Federal officers on October 4th, 1922. It took

(Testimony of Emil Olaf Matterand.)

place about half-past five. The agents were stationed on my farm. I was about a hundred and fifty feet north of them. At the time of the seizure, the boat was coming up from the south and going north. The defendants were on the boat at the time of the seizure. I first saw the "Dragon" on October 4th after she left Snaggy Point. The boat reached the city dock at Stanwood at six o'clock. The boat was loaded down with liquor at the time it was seized. The liquor was contained in sacks. I did not count them. I saw the "Dragon" all through the summer. I saw the defendants on the "Dragon" during the month of September. I have lived in Stanwood all my life. During the month of September, I could say with certainty that I have seen the defendants four times together on the "Dragon."

Q. Did you ever see them take any liquor off the "Dragon"?

Mr. DORE.—Objected to as incompetent, irrelevant and immaterial. [117]

The COURT.—Objection sustained.

Mr. EMORY.—May it please the Court—

Mr. DORE.—Before we have any speeches, I suggest that the jury be excused.

The COURT.—Is this one of the acts laid in the indictment.

Mr. DORE.—No.

Mr. EMORY.—I have authorities that we can show overt acts that are not charged.

(Testimony of A. W. Johnson.)

The COURT.—Unless this is one of the offenses charged in the indictment, it will not be permitted.

Mr. EMORY.—I have authority here to the contrary.

The COURT.—Oh, you have not. I don't care to argue it. I granted a new trial some time ago because I permitted the district attorney to introduce testimony as to a former occurrence.

Testimony of A. W. Johnson, for the Government.

A. W. JOHNSON, a witness produced on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

My name is A. W. Johnson. I am a clerk in the Federal prohibition office. I have been employed there since March 1, 1920. I arrived in Stanwood about 2:30 o'clock on the morning of October 5th after the seizure of the "Dragon." Between twelve and one o'clock on that day, I heard a statement made by defendant Chambers with reference to his connection with the transaction. It was made at Dr. Starr's hospital. Agent Regan, Mr. Chambers' father and myself were present at the time. It was made in Mr. Chambers' room at the hospital. Mr. Regan told Chambers that anything that he might say would be used against him in any trial that came up in connection with the case. Chambers said in the [118] first place that he had an interest with Fredericks in the boat. Later, however, when his father was present and said to him,

(Testimony of A. W. Johnson.)

"Now you tell the exact truth or facts as they occurred," then it was that Mr. Chambers stated that he was employed as an engineer on this boat, that he had made two trips and that his compensation was $25.00 a trip as engineer and that he had no interest in the boat. He said the liquor was gotten at Pender Island. I do not know the exact location of that island but I know it is somewhere in the Canadian waters. He said Mr. Fredericks employed him.

Cross-examination.

He said that he was employed as engineer on the boat at $25.00 a trip. And that was all the interest he had in it. I did not state to Chambers before he made his statement that it would be better for him and he would get off easier if he told me what he knew about the matter. He was in bed. Regan and Mr. Chambers' father were in the room besides myself. He did not impress me as suffering at the time. This interview took place about one o'clock in the afternoon of the fifth, the day after the shooting. He said he got this particular liquor at Pender Island.

Testimony of Leonard Regan, for the Government.

LEONARD REGAN, a witness produced on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

My name is Leonard Regan. I am a Federal prohibition agent. I went to Stanwood in company

(Testimony of Leonard Regan.)

with Mr. Johnson and visited Mr. Chambers on the 5th of October at Dr. Starr's hospital there. We went to Chambers' room about 1 o'clock, where he made a statement with reference to his connection with the "Dragon." We went into the room in company with Mr. Chambers' father, asked a few [119] questions, warned him of his constitutional rights, told him he did not need to talk if he did not want to, we asked some questions about the ownership of the boat,—if he was a full partner with Fredericks,—and at first he said he was. Then his father warned him to tell the truth; he said, "Tell these men the truth; it will be a great deal better for you." Then he told us he was employed by Fredericks and was getting $25.00 a trip and that this was one of three trips that he had made to Pender Island. This was the last of the cache. I also asked him about the number of cases of liquor. He couldn't give me a definite answer but said it was the last of the cache. He thought about 235 cases. He said it came from a cache in British Columbia just across the line.

Cross-examination.

During all this conversation, Mr. Chambers' father was present and heard it all.

Testimony of C. W. Kline, for the Government.

C. W. KLINE, a witness produced on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

My name is C. W. Kline. I am a Federal pro-

(Testimony of C. W. Kline.)

hibition agent engaged in that service over four years. During that period, I have spent a great deal of time in testing seized liquors for their alcoholic content. Government's Exhibits 1, 2 and 3 (bottles of whiskey) were turned over to me on the 6th day of October and have been in the vault ever since. Government's Exhibit 2, for identification, is a hundred proof, 50% alcohol. Government's Exhibit 3 is the same. Government's Exhibit 1 is 90 proof, 45% alcohol. (Whereupon Government's Exhibits 1, 2 and 3 were offered in evidence and were by the Court admitted over the objection of the defendants that they were seized in violation of their constitutional rights. [120] Objection denied and exception to defendants allowed.) Government's Exhibits 4, 5, and 6 were turned over to me October the 6th. No. 5 is a 100 proof, 50% alcohol, as is also Exhibit No. 4. No. 6 is 90 proof, 45% alcohol. (Whereupon said exhibits are received in evidence over same objection of defendants and exception noted.) Government's Exhibits 7 and 10 for identification were turned over to me on October 6th. No. 7 is 90 proof, 45% alcohol, as is also No. 10. (Whereupon Government's Exhibits 7 and 10 are received in evidence over the same objection of defendants and exception allowed.) Government's Exhibit 8 is a bottle taken out of the sack (Government's Exhibit No. 9) by me this morning. All of these bottles contained liquor fit for beverage purposes. (Whereupon Government's Exhibits 8 and 9 were received in evidence

over defendants' same exception and exception allowed.)

Thereupon the Government rested.

Thereupon the defendants, by their counsel, moved for a directed verdict of not guilty under Count I, upon the ground that no competent evidence had been introduced, which tended to establish the overt act laid in the indictment. The defendant Fredericks further moved for a directed verdict of not guilty under Count I on the ground that if the Court should hold that the statement made by Chambers as to the liquor being brought from British Columbia was competent to establish the overt act, as against Chambers, it could not establish the overt act as against Fredericks, said statement being made after the termination of the alleged conspiracy. Both of the defendants also moved for a directed verdict in their behalf upon Count II of the indictment wherein they are charged with importing liquor from British Columbia upon the ground that without other evidence of the *corpus delicti,* i. e., the importation other than [121] the finding of the liquor, the alleged confession of Chambers was insufficient to bind him and could in no event bind Fredericks because made in his absence. Defendant Fredericks also moved separately for a directed verdict in his behalf upon Count II of the indictment wherein he was charged with importing liquor from a foreign country upon the ground that the evidence was not sufficient to bind him and there was a total failure of proof thereof. Thereupon said motions were argued by

(Testimony of Joseph Fredericks.)

counsel for the said defendants and the Government and at the conclusion of said arguments the Court orally rendered the following ruling:

The COURT.—"This is the way I feel about the issue that is presented now. I don't think the motion is well taken as to Count I. I think the testimony is sufficient to bring the case within the overt acts charged. Now, as to Count 2,—the importation,—that is in a different class and sustains a different relation. I believe it to be the duty of the Court in a case of this kind where all of the facts are so interrelated as they are here to withhold conclusion until the whole testimony is before the Court and that will be the conclusion now arrived at. At this time the motion will be denied as to all of the counts and all of the motions. The motion may again be raised for a directed verdict at the conclusion of all the testimony."

Mr. DORE.—Please note an exception.

Thereupon Donald A. McDonald, having made a statement to the jury, on behalf of the defendants, the following evidence was thereupon offered for them:

Testimony of Joseph Fredericks, in His Own Behalf.

JOSEPH FREDERICKS, appearing as a witness in his own behalf, being duly sworn, testified as follows:

Direct Examination.

My name is Joseph Fredericks. I live in Seattle now. [122] I am thirty-nine years old. I have a family. I was born in Snohomish County and lived

(Testimony of Joseph Fredericks.)

there until I was about three years old, when I moved to Skagit County. I used to have a boat business. I worked for the Pacific Coast Milk Co. for five years. I own land in Skagit County and farm it. I ran a boat for the Pacific Coast Milk Co. for about four or five years hauling milk. I towed logs for a mill company for about four years. Defendant Chambers and I were in business together in the Lummi Bay Packing Co. We hauled fish one summer. The launch "Dragon" was the property of myself and Chambers. We used it at first to go back and forth to the cannery. And also used it for pleasure and hunting. I operated the boat myself. It could go about seven miles an hour and could not withstand rough water. It was old, being built in 1906, and is pretty rotten now so that it leaks badly. I have been living in Seattle about four months, coming here just a few days prior to this occurrence. I arrived in Stanwood on Saturday afternoon, the last day of last September. My purpose in going there was to go hunting with Mr. Chambers. The duck season opened on the 1st day of October. The launch "Dragon" was tied up at the dock at Stanwood. We started out on our duck hunting trip shortly after noon on October 1st. We went to the mouth of the north ford of the Skagit river. It was low tide when we got there and we had to wait there until about eleven o'clock that night, at a place known as the "Hole in the Wall," which is at the south end of the Swinomish slough. We borrowed a boat there from a man by the name of George Falk, a fisherman. We tied this

(Testimony of Joseph Fredericks.)

boat behind the launch. The tide was right about midnight. We went through from the "Hole in the Wall" and on through Swinomish slough out into Modella Bay and from Modella Bay to Joe Leary's slough. It is marked on the map [123] Olympic slough (Defendant's Exhibit "A"). We arrived there about two o'clock in the morning. We anchored and went to bed. We had arrangements for sleeping on the boat. We got up the next morning about half-past seven. We noticed when we got ready to go duck hunting that our rowboat was gone. We then decided to go back to Swinomish slough and see if we could find it. We went back and started through the slough as soon as the tide raised again. This was about ten o'clock. We reached the place where the Great Northern Railway bridge crosses the north entrance of the Swinomish slough about eleven o'clock. We saw a man by the name of Barrett there and the bridge-tender, a man by the name of Jackson. When we saw these men on the bridge, Barrett hailed for us to stop. As we went to stop, we burned out our magneto and ran on a bar in the channel, because the tide was not yet full. When the magneto went wrong, we did not have any control of the power on the boat. Barrett was brought out to us by the bridge-tender in his row-boat. Both of them came on board our boat. Barrett was hunting at the time. He had a rifle with him. We were in this difficulty on the sand bar from eleven o'clock until about four o'clock in the afternoon. We took the magneto off the engine and Mr. Chambers took it into Mr. Vernon to get it fixed up. About four o'clock

(Testimony of Joseph Fredericks.)

we got the boat repaired and started for La Conner arriving there a little after five o'clock. We took on some gasoline at the gas station. I got a receipt and left it on the boat at the time it was seized. After we got this gas, we called up Mr. Tjesland, a farmer out in the country that we knew and asked him to come in to La Conner and take us to Stanwood. He came in and was on board of our boat. He had an automobile and took us to Stanwood, where we arrived between eight and nine o'clock. Our purpose in going there was to get a magneto at the Palace Hotel. We saw Mr. Albert Cort, the man who runs the hotel there. [124] We took a magneto and I borrowed a rifle from Cort. We left around twelve o'clock. Tjesland, Chambers and myself then returned to La Conner, arriving there about one o'clock. We left Stanwood on October the 1st, left Stanwood at midnight on the 2d and got back to La Conner about one o'clock in the morning of the third. We slept on the boat at La Conner that night. We got up about six o'clock on the morning of the 3d and went out to the fish traps. This fish trap was Mr. Hebloom's. We met Harry Rock there at his wannegan. A wannegan is a scow with a house on it used on all fish traps for men to live in. When we got there, Harry Rock was in bed. He had just gotten up when we got there. We got a rowboat from him about nine o'clock and went hunting. We were out all day until about four o'clock in the afternoon, when we returned to Harry Rock's place and tied up our boat

(Testimony of Joseph Fredericks.)

at his wannegan. We had gotten a few ducks and cooked them and all three of us had supper there together. After which we sat around and talked and played the phonograph on the launch. He stayed with us on the launch until about eleven o'clock when he went to work about his trap and then to bed. Along about half-past three a fellow came and hollered at the boat and I got up to see who he was and he said he was broke down and wanted to know if I could not help him out. I told him I didn't know, I guessed I could, and asked him what the matter was. He said that he had a little cargo of stuff that he wanted to take into Stanwood. He wanted to know if I could take it in for him and I told him I would. He went to work and loaded it in the boat. Mr. Chambers was in bed asleep in the engine-room at the time. The launch that was broken down was anchored just off what is known as Skagit Island. As far as I know Mr. Chambers was not awake at any time while they were putting this stuff on board. After the boat was loaded we went in toward Stanwood. We went in through the north fork, as we did so [125] we met the boat "Lily" in charge of Captain Whalen. We put the fellow, who owned this stuff off on the bridge. He told me that he would meet me at Stanwood at the dock. As soon as he got off, I started on to Stanwood. We got up there pretty near to the dock and the engine shut down again. The magneto went bad. The bridge at which this man got off was about three-quarters of a mile from the city dock at Stanwood.

(Testimony of Joseph Fredericks.)

This trouble with our magneto developed just about opposite the sawmill in Stanwood. I tried to fix it again. In the meanwhile the boat kept drifting down the river. It drifted out of the south channel to what is known as Red Light. We got on the tide flats there, the tide was going out and we had to wait for six hours before the tide came up. We then started back into Stanwood, about four o'clock. We had more trouble with our magneto and tied up at Snaggy Point. We got it fixed up again and started on in toward Stanwood. It was then the Federal Agents held us up. I could not hear everything they said as I was in the back of the boat cooking supper, but their shooting and hollering attracted my attention. I didn't pay any attention to this shooting because it was duck shooting time and I thought it was hunters. Mr. Chambers knew nothing about these sacks being put on board or that they were going to be on board.

Cross-examination.

I do not go duck hunting often in the "Dragon." It is not an expensive boat to go hunting in. I am a farmer now. I have lived in Seattle for the last four months and was at the time of this occurrence. I do not know the name of the man who loaded the liquor on the boat. I never saw him before. I did not know what it was that was being loaded in the boat at the time. I did not help load it on. I was in the engine-room at the time. They brought it through the engine-room. I saw them bring the sacks through. I did

(Testimony of Joseph Fredericks.)

not know it was liquor. I did not see [126] them bring as much as 219 sacks on board. It took about forty minutes to load it. It took two men, who I did not know to load the boat. It took them forty minutes. Chambers was part owner in the boat. I did not get his permission to load the boat. I did not know that it was contraband or rendered the boat subject to seizure. I did not know it at the time the boat was seized by the Federal agents.

Testimony of Clarence Chambers, in His Own Behalf.

CLARENCE CHAMBERS, appearing as a witness in his own behalf, being duly sworn, testified as follows:

Direct Examination.

My name is Clarence Chambers. I live at La Conner. I am thirty-one years old. I was born at La Conner and lived there all my life. I have been helping my father on his farm. This farm is about a mile east of La Conner. Prior to the time I joined the army in 1917, I was a fisherman for seven or eight years. I have known Fredericks for the past three or four years. We were interested together in the Lummi Bay Packing Company. We hauled fish for the company in 1921. I had an interest in the boat "Dragon." I came down to Stanwood on Saturday, September 30, 1922. We got the boat in shape to go hunting. We left Stanwood about one o'clock. We went out the

(Testimony of Clarence Chambers.)

north fork of the Stillaguamish River to the "Hole in the Wall" and borrowed a rowboad and laid there till the tide raised about twelve o'clock that night. We then went off to the east of Hat Island, through the Swinomish Slough. Our purpose in going there was to hunt ducks and geese. We went to bed that night and early in the morning we got up and found we had lost our rowboat and started back to La Conner to look for it. We arrived at La Conner between five and six o'clock. We broke down at the Great Northern bridge and were hung up about four hours. When we got to La Conner, we called up Oscar Tjesland and had him take [127] us to Stanwood in his auto, where we got another magneto. We got to Stanwood about nine o'clock. We borrowed a rifle from Mr. Cort. We got back to La Conner about one o'clock next morning. We slept on the boat. About six o'clock the next morning we went around Skagit Island to a fish-trap and tied up. We met a man named Rock there. This was on the third. We got his rowboat and went out hunting that day. We returned about four in the afternoon. Rock came aboard and had supper with us. We went to bed between eleven and twelve o'clock. I did not wake up until about 7 o'clock next morning, when we were right off Stanwood on the mud flats, high and dry. We got off the mud flats about one or two o'clock. We started for Stanwood about three o'clock, had trouble with the engine again, stopped at Snaggy Point, fixed it up and started on up for Stanwood. I was steering the boat. The next

(Testimony of Clarence Chambers.)

thing that happened was that four or five men popped up from behind the dike. They used the foulest language I ever heard in my life and then commenced shooting. I was shot and put in great pain. I was taken to the Stanwood hospital. Mr. Regan came to see me at the hospital. The same leg that was shot was hurt while I was in the airplane service in the army. I was suffering great pain while Regan was there. I said nothing to Regan except that I didn't want to talk to anyone. I did not say I had been to Pender Island. I don't know where Pender Island is and was never there.

Cross-examination.

When I got up on October 4th, I noticed some gunny-sacks on the boat. I have no idea how many there were. I did not ask what they were. I owned a half interest in the boat. I got up at 7 o'clock. The boat was seized at 6 o'clock. In some places the gunny-sacks were piled within two feet of the ceiling. In order to reach the galley where I was when the [128] officers first apprehended the boat, I had to crawl over sacks to get back to the galley. I did not notice they contained bottles. I did not know what was in the sacks. I do not know whereabouts in Stanwood they were to be unloaded. I want the jury to believe that I did not mention the sacks from the time I got up till the boat was seized. Fredericks did not tell me about some third parties loading the sacks on the boat.

Testimony of Jess Hall, for Defendants.

JESS HALL, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

Direct Examination.

My name is Jess Hall. I live at Stanwood. I am in the transfer and auto hire business. I have lived there all my life. I know the defendants. I saw them in Stanwood October 1st about one o'clock. They were leaving Stanwood on a boat. They were talking about going hunting. I next saw them on the night of October 2d in front of the Palace Hotel about 11 o'clock at night.

Cross-examination.

I know it was the first of October that I saw the defendants in Stanwood because that was the day the duck season opened and everybody was going hunting. I have never been convicted of a felony.

Testimony of Albert Cort, for Defendants.

ALBERT CORT, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

Direct Examination.

My name is Albert Cort. I live in Stanwood. On the first day of October last, I was running the Palace Hotel at Stanwood. I have known the defendants for ten or fifteen years. I saw them in the town of Stanwood on the 2d day of October [129] between ten and twelve o'clock in the even-

(Testimony of Albert Cort.)

ing. They were at my hotel. They got a magneto they had left there and borrowed my rifle.

Cross-examination.

I never owned a couple of Mauser revolvers with convertible stocks.

Testimony of Frank Jackson, for Defendants.

FRANK JACKSON, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

Direct Examination.

My name is Frank Jackson. I live on the Anacortes branch of the Great Northern Railway at Bridge #12. It crosses the Swinomish Slough at the north end. I saw the defendants once before. They were aboard the boat between the two bridges. It was some time the first part of October. I was aboard the boat for a few minutes. I saw no gunnysacks or anything in the boat. It was empty. I went on board because there was a man on shore who wished to go out there and I kept the boats and rowed him out.

Cross-examination.

I could not swear the exact day but I think it was the first week in October.

Testimony of Oscar Tjesland, for Defendants.

OSCAR TJESLAND, a witness produced on behalf of defendants, being duly sworn, testified as follows:

Direct Examination.

My name is Oscar Tjesland. I live at Mt. Vernon and am a farmer. I have known the defendants all my life. I saw the defendants the 2d day of last October at La Conner about 7:30 o'clock in the evening. They were on the boat "Dragon" tied up at the Standard Oil Dock. I saw no gunnysacks [130] or cargo on the boat. It was empty I stayed on the boat about half an hour. We then went to Stanwood. The defendants got a magneto and a rifle there. We drove back to La Conner, arriving there about midnight. I did not go on board the boat then.

Cross-examination.

I have been a farmer all my life. I remember it was the second of October that I saw them because they were arrested on the 4th and I know it was two days before that.

Testimony of Harry Rock, for Defendants.

HARRY ROCK, a witness produced on behalf of defendants, being duly sworn, testified as follows:

Direct Examination.

My name is Harry Rock. La Conner is my home. I have lived there 26 years. I was born there. I

(Testimony of Harry Rock.)

am a fish-trap foreman. During the first week in October, 1922, I was working on a fish trap in Skagit Bay, about four miles west of the "Hole in the Wall." I remember hearing about Chambers being shot. I saw the defendants on October 3, 1922. Between 7 and 8 o'clock in the morning they came and tied up at my house boat. They borrowed a skiff from me. They said they were going hunting. They pulled out and went south. About 5 o'clock I saw them back at my house boat and I had supper with them. I stayed with them until about eleven o'clock that evening. We talked and listened to the phonograph they had on the boat. I saw no sacks or any cargo on the boat. It was empty.

Testimony of Henry Whalen, for Defendants.

HENRY WHALEN, a witness produced on behalf of defendants, being duly sworn, testified as follows:

Direct Examination.

My name is Henry Whalen. I am the captain of the [131] boat "Lilly." It is a towboat. I was crossing the flat with a tow of logs about 6 o'clock in the morning, when I saw the boat "Dragon" entering the north channel of the Stillaguamish River.

Testimony of Samuel Chambers, for Defendants.

SAMUEL CHAMBERS, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

Direct Examination.

My name is Samuel Chambers. I live in La Conner. My business is farming. I have lived in La Conner thirty-four years. I am the father of the defendant Chambers. I was present in Dr. Starr's hospital on the afternoon after my son's arrest. A man named Johnson and a man named Regan were present. I heard the conversation that took place between my son and those men. My son was suffering pretty bad at the time. He could speak distinctly. I got there about 11 o'clock in the forenoon. He was taken there the night before. Regan and Johnson asked him where he got the whiskey. He said he did not know where they got it and just groaned. This Government man they called Johnson said, "You had better tell the truth, because it will be easier for you." He just lay there and turned over on his side and groaned. That is about all that was said or done there. He made no statement that he got the liquor at Pender Island. I heard no statement about Pender Island. I heard what was said. My son was in a great deal of pain. It was the same leg that he had hurt when his airplane fell.

Cross-examination.

I cannot tell you whether my son was back in

(Testimony of Samuel Chambers.)
Stanwood a week later. I know he went from the hospital on crutches and I wanted him to stay there for a while. This man Regan jumped and roared around and said, "We will have to put officers over [132] him." I was in the room all the time the officers were. They went out of the room before I did. They went into a private room. I don't know whether they came back. I went to get a pair of pants for the boy.

Thereupon both sides rested.

Thereupon the jury was excused while counsel for defendants presented legal matters.

Thereupon the defendants each severally moved that a verdict of not guilty be returned as to him, or in the alternative that Count I be taken from the jury and a verdict of not guilty be directed, on the ground that there was no evidence to establish the only overt act alleged, the importation from Canada, except the alleged statement of Chambers, which was not sufficient as to Chambers on the ground that the *corpus delicti* cannot be proved solely and exclusively by a confession and as to Fredericks for the additional reason that the statement of his codefendant Chambers after his arrest and in his absence could not be considered as against him. As to Count II each defendant severally moved in the alternative that the court direct a verdict of not guilty, Fredericks for the reason that there was no testimony that connected him with any importation, except the statement made by his codefendant after his arrest and in his ab-

sence, and Chambers for the reason that the *corpus delicti* cannot be proved solely and exclusively by a confession. And if the foregoing motions were denied, the defendants moved that the Government be required to elect between the conspiracy and the other three counts in the indictment.

Thereupon the Court orally ruled as follows:

The COURT.—I think the motion should be sustained as to Count Two as to each defendant. There is aside from the statement alleged to have been made by the defendant Chambers [133] no testimony before the Court that this was imported, and the statement of Chambers cannot bind Mr. Fredericks upon the importation; and there is nothing establishing the *corpus delicti* aside from the statement. As I understand the law, there must be some evidence of some kind to establish the *corpus delicti* before the confession could be applied.

Mr. DORE.—Would it be proper to ask your Honor what you consider the evidence is as to Count One, so we can make our argument conform?

The COURT.—Oh, yes, there is testimony as to Count One. The motion is denied as to Count One, the conspiracy charge. Of course, we all understand that at common law a conspiracy or crime was complete upon the act of conspiracy being entered into without any other act; but under the act of Congress,—section 37,—some overt act is necessary to carry into effect or carry forward the conspiracy before it is an offense. Now, that overt act may be any act the most minor. Proof of any sort of an act on the part of a person,—a word

would be sufficient, a writing, a movement of any kind. I would say here that while this indictment charges the conspiracy was entered into on the fourth of October, the Government is not bound by that date. The conspiracy may have been entered into any time within the period of limitations of three years. There is testimony here as to the activity of the defendants with relation to this vessel prior to this time in the month of September, and likewise in the month of October. The overt acts charged here are that "After the formation of the conspiracy in pursuance of in order to effect the object of this conspiracy, said conspirators,"—naming them,—"on or about the 4th day of October did knowingly, unlawfully, carry and transport in [134] and on a certain gas boat known as the 'Dragon' to a place in Stanwood." The charge is that they lived in Stanwood, that the conspiracy was entered into at Stanwood, and they moved down the river. Any sort of a movement effectually would be sufficient. So that there is ample testimony here with relation to the overt act, if a conspiracy was entered into, for the purpose of effecting the offense. That is a matter for the jury to determine.

Mr. DORE.—We may have an exception, of course.

Mr. McDONALD.—Your Honor holds that the law to be that the overt act need not be proved as laid?

The COURT.—Oh, no.

Thereupon the jury returns to the jury-box, whereupon the Court instructs the jury to return a verdict of not guilty as to both defendants as to Count Two, the Court saying:

> "There is no testimony here that this liquor was imported except the statement of the defendant Chambers testified to by the witnesses for the Government, if that was made, which is denied. The statement would not be admissible as against Fredericks because it was made in his absence, and would not bind him; and as against Chambers himself under the law there must be some evidence of importation before even his statement would bind him. So as to both defendants the motion will be granted as to Count 2, but denied as to the other counts. So the counts for the jury's consideration will be the conspiracy count and the possession and transportation counts."

Thereupon, defendants by their counsel duly excepted to the denial of their motions other than as to Count 2.

Thereupon, after argument by counsel for the Government and the defendants, the following instructions were given by the Court: [135]

Instructions of the Court to the Jury.

Gentlemen of the Jury:

The defendants are charged in four counts in this indictment with a violation of the laws of the United States. Count 2 has been withdrawn from your consideration. That leaves Count 1 and Count

3 and Count 4. Count 4 charges the transportation of intoxicating liquor contrary to the National Prohibition Act, and Count 3 charges the possession of the same liquor. The defendants are guilty of both Counts 3 and 4 or not guilty of those two counts, because the transportation of course must likewise include the possession.

The defendants have each pleaded not guilty as to each count in the indictment. That means they are denied. They are presumed innocent until they are proven guilty beyond every reasonable doubt. The burden is upon the Government to prove that they are guilty by this degree of proof. You of course know what transportation means. You likewise know what possession means. If they transported the liquor in the boat, if you believe the testimony of the witnesses for the Government that this liquor was in the boat, and the defendants say that they had charge of the boat, and if they knew what was in the boat, and knew this was liquor, then they are guilty of Count 3 and Count 4.

Upon Count 1 you have a more difficult issue to determine. This count is drawn under a section of the United States statute which provides that if two or more persons conspire to defraud the United States in any manner or for any purpose and one or more of such parties do any act to effectuate the object of the conspiracy all of the parties entering into the conspiracy are guilty. In order to be guilty under this section of the statute, it is not necessary that the Government lose anything. It is sufficient if the conspiracy is to violate a law of the

[136] United States, and the charge in this case is that it is a conspiracy to violate the National Prohibition Act.

Now, then, in the proof submitted it is not necessary that the Government prove that a formal agreement was entered into between the parties, or that the matter had been formally discussed by them and agreed upon between them as to each part that each shall do. It is sufficient if there was an understanding between the parties as to the particular thing to do to accomplish, and each of the parties so regulated his conduct and co-operated with the other as to effect the object of the conspiracy. The gist of this case is the conspiracy, and the effectuating of an object to carry it out,—the doing of some act which will effectuate the object of the conspiracy.

In order to establish a conspiracy there must be three things established. One is the conspiring together, the co-operating, the confederating, the conduct of the parties that so interrelate into each other as to preclude a conclusion other than that there was a conspiracy and understanding to do the particular thing that is charged. And then the next is to commit the offense,—the conspiracy to commit in this case the violation of the National Prohibition Act. And then before that is an offense something must be done by one of the parties to carry forward the conspiracy. It is immaterial what that act is. It might be sailing a boat down the stream, or it might be carrying a cargo or the prohibited commodity in a boat. It might be any

minor thing. In this case the overt acts charged in the indictment are set forth in that count; and it is not necessary that the Government establish all of the overt acts charged. It is sufficient if they have proved one act that would carry forward the conspiracy.

Conspiracy is sometimes denominated by law writers as [137] a partnership in crime. Now, in a civil partnership one partner binds the other by his acts and his statements with relation to matters within the partnership business. So in a criminal conspiracy every person entering into a conspiracy is a partner in that conspiracy, and whatever he does or whatever he says during the continuance of the conspiracy binds the other party; but after the conspiracy is ended or consummated then the partnership ceases and a party cannot bind the other by any statements that he may make or anything that he may do.

Now, in this case the Court permitted a statement that was testified by witnesses on behalf of the Government as having been made by the defendant Chambers with relation to what they were going to do and how it was to be carried forward. Now, that statement may be received against Chambers alone. That statement may not be received or considered by you as against Fredericks, because at the time the statement was made the conspiracy, if one had been entered into, was consummated. So that in your deliberations in this case you will not consider the statement made by Chambers as against Fredericks. But you will consider all of

the acts they did, the relationship between the parties, the co-ownership with relation to the boat as testified to by both parties, and all of the matters and their conduct during the time that is covered by the testimony and charged in the indictment.

The indictment charges the conspiracy to have been entered into on the fourth day of October. Now, it is not necessary that the conspiracy be proven as entered into upon that date; it is sufficient if the testimony shows that the conspiracy was entered into by these parties at any time within three years. But there is no testimony in this case that goes farther back than the month of September of the year in which the conspiracy [138] is charged with relation to the conduct of these parties.

The Court withdrew,—as I stated a moment ago briefly,—Count 2. There is a difference between Count 2, importation, and the conspiracy count. Now, a conspiracy may be completed and effected without bringing in a drop of liquor as charged. Without bringing in any liquor, if the parties entered into a conspiracy to violate the National Prohibition Act, to import liquor from British Columbia, and one of the persons then does anything to effect that object,—this is simply for the purpose of illustration,—if he writes a letter to carry forward, or if he runs a boat around the bay, if he does anything,—it is immaterial what it is,—to effect the object of the conspiracy, why then the offense is complete without bringing in any of the liquor. But to import any liquor into the United

States, that means to bring it in. They must actually bring the liquor in before they would violate the importation act. But under the conspiracy act, that is not necessary. I merely go a little into that detail because of the argument that was made before you by counsel for the defendants.

Now, you are instructed that the defendants in this case contend there was no conspiracy, and that there was no object or act done by them to effect the object of any conspiracy; and then they seek to account for all of the time that was covered by the testimony on the part of the Government with relation to what they did, and that what they did was not for the purpose of carrying forward any conspiracy but was in another enterprise entirely; and if they have accounted for their time and if they have been elsewhere and show the relation they sustain is in harmony with proper deductions and reasonable conclusions to be drawn from the circumstances detailed by the witnesses on the part of the Government, or of course if it is sufficient to [139] raise a reasonable doubt in your mind you will resolve that doubt in favor of the defendants in this case upon that count as well as the other counts.

Now, as to Counts 3 and 4, the defendants may be guilty upon Count 3 and Count 4 and not guilty upon Count 1. If the defendants did not enter into any conspiracy and brought this whiskey into Stanwood, then it is immaterial where they got it. They say it was loaded on the boat out on the water, —you will understand the testimony,—in the vi-

cinity of La Conner or this *sie,* and if it was they would be guilty. It is, I guess, conclusively established that it was in the boat. Of course, if they didn't know that it was whiskey, they would not be guilty even if it was in the boat; but it is for you to say whether there is any credence to be placed on their testimony that they didn't know. You are the judges of what the weight of the testimony is. You should try this case fairly, as I know you will. If you have a reasonable doubt as to whether these defendants entered into a conspiracy you will return a verdict of not guilty as to Count 1. If you are convinced beyond a reasonable doubt of their guilt upon Counts 3 and 4, you will return a verdict of guilty upon both these counts as to both these defendants.

A good deal was said and emphasis placed in argument upon the fact that one of the defendants was a soldier in France. We honor him that, Gentlemen of the Jury, and I regret that I must refer to it. Any man who served his country on the battlefields of France,—you have sons and so I have,—is entitled to all the credit in the world. But that does not give anybody any license to come back here and violate the laws of the United States and disgrace the flag of his country after he pledged his life in its defense. I don't like for any man to get before a jury of intelligent citizens and try to defend a man on that [140] ground. We have nothing to do with the law,—neither you nor I; we have simply to do with its enforcement. God forbid that we shall ever arrive at a point

where courts and juries will not function in administering the laws of the country; because when courts and juries fail to function, then, Gentlemen of the Jury, this Government will have pretty nearly run its course. It is the keystone in the arch of the safety of the country. I merely want to impress that. That keystone means liberty for the defendant, means justice for him, means everything, means every presumption in his favor; but it doesn't mean anything else.

Now, then, I want you to consider this case fairly, as I know you will. If you have a reasonable doubt in your mind as to the guilt of the parties upon that first count, then return a verdict of not guilty in that case, because the Government doesn't want the defendants convicted unless they are guilty,—unless you twelve men are convinced beyond a reasonable doubt that they are guilty; but if you are convinced beyond a reasonable doubt that they are guilty, then it is your duty to return a verdict of guilty. And on the other counts, you will give them the same consideration as I have indicated you should give on Count 1.

A reasonable doubt, Gentlemen of the Jury, is just such a doubt as the term implies; it is a doubt for which you can give a reason. It is such a doubt as would cause a man of ordinary prudence, sensibility, and decision in determining an issue of like concern to himself as that before the jury to the defendants, to pause or hesitate in arriving at a decision. It is not a speculative, imaginary, or conjectural doubt. It is a doubt that is created

by the want of evidence, or it may be created by the evidence itself. A juror is satisfied beyond a reasonable doubt when convinced to a moral certainty of the guilt of the [141] party charged.

The COURT.—I believe I have covered the case. Are there any exceptions?

Mr. DORE.—The defendants at this time except to that part of the Court's instructions wherein the Court, in words or in substance, stated that to convict the defendants on Count 1 of the indictment it was not necessary that the Government offer any proof or that the jury should find any evidence to sustain the proposition that any of the liquor that was transported on the boat "Dragon" had ever been in Canada, or had been imported from Canada; that in the absence of any evidence in the case that the defendants ever brought said liquor from Canada the defendants might be convicted.

The defendants, and each of them, except to that part of the Court's instructions which, in words or in substance, was to the effect that it was not necessary for the Government to prove the overt act as alleged in the indictment; that if the Government had proved that the "Dragon" at any time during the month of September left Mt. Vernon, or that any liquor had been carried on it at any time, that would be sufficient.

The defendants except particularly to the illustration given by the Court, in which the court said it was not necessary to establish the fact that any of the liquor had been imported from British Columbia in order to convict the defendants on

Count 1 of the indictment; that if they went down the river on the boat together, but did not speak a single word, that anything in the case that showed an agreement between them, any minor thing that tended to effectuate the object of the conspiracy, would be sufficient.

The defendants in taking these exceptions call the [142] Court's attention to the fact that, although as an abstract proposition of law it might be correct as to another indictment, whereas in this one, where only one overt act is alleged, the instruction is erroneous and vicious in telling the jury that the overt act need not be proved as laid. The defendants contend that if a number of overt acts had been laid in the indictment, proof of only one would be sufficient, but where only one has been laid, it must be proved as laid.

The defendants except to that part of the Court's instructions which, in words or in substance, are to the effect that where a conspiracy has been formed, any person who enters into the same and contributes to the object of the conspiracy is guilty. They call the Court's attention to the error therein contained because the Court had failed to state that before a person entering into a conspiracy or doing an act that contributes to effectuate the object of the conspirators can be guilty he must have knowledge of the existence of the conspiracy, and that the act that helps in the accomplishment of its object is done knowingly and with the intention of bringing about the accomplishment of the conspiracy.

The defendants except to that part of the Court's instructions wherein the jury is told that it is not necessary to prove an overt act as laid, that anything that tends to effectuate the object of the conspiracy, regardless of whether it is alleged or not, would be sufficient, and that any minor thing whatsoever that the jury might find tended to effectuate the object of the conspiracy would be sufficient.

The defendants except to each and every part of any instruction wherein it is by word or inference suggested to the jury that the burden is not upon the Government to prove the [143] single overt act is laid in the indictment.

The COURT.—The exceptions will be noted. Of course, the jury understands that an overt act is of no consequence, or any act is of no consequence, unless the conspiracy is entered into. Before any act can be considered as an overt act, the jury must conclude that a conspiracy has been entered into as charged.

Mr. McDONALD.—Defendants also except to the failure of the Court to give their requested instruction No. 21, wherein they request that the Court instruct the jury that the overt act must be proved as laid.

The COURT.—Note the exception.

Mr. McDONALD.—Also the defendants except to the failure of the Court to instruct the jury on the presumption of innocence.

The COURT.—Oh, yes, I instructed them that the defendants are presumed to be innocent until

proven guilty beyond every reasonable doubt; and that the burden is upon the Government to prove guilt by that degree of proof.

Mr. McDONALD.—We also except to the Court's failure to instruct the jury on the credibility of the witnesses.

The COURT.—Yes, I think I omitted that. I will instruct on that.

You are the sole judges of the fact in this case, and you must determine what the facts are. You are likewise the sole judges of the credibility of the witnesses. In determining their credibility you will consider the demeanor of the witness upon the witness-stand, his interest or lack of interest in the result of the trial, and the reasonableness or unreasonableness of his story, and from all these determine where you believe that the credence in this case is and where the truth as to any fact lies.

It will require your entire number to agree upon a [144] verdict. When you have agreed upon a verdict, you will cause it to be signed by your foreman, whom you will elect upon retiring to your jury-room, and return with it into court.

I have in this verdict had recorded "not guilty" as to Count 2. You will not concern yourselves as to that count in your deliberations. You will have to find both defendants guilty on Count 1 if you find any of them guilty, because one man cannot conspire and there is no testimony with relation to anybody else.

The indictment is not any evidence. That is

merely a paper charge which sets out what the charges are before you. You may retire.

The COURT.—Do you agree that a sealed verdict be entered?

Mr. DORE.—I think so. I have no desire to hang around here all night.

The COURT.—To-morrow is a holiday and there won't be any court. We will remain here until six o'clock. If the jury doesn't agree upon a verdict by six o'clock, it is agreed by both sides that the jury may return a sealed verdict at ten o'clock next Thursday morning.

The foregoing contains the whole of the Court's instructions to the jury.

At the close of the evidence, and before any argument was made to the jury, the defendants presented to the Court in writing certain requested instructions, among which were the following:

> "If you should, however, be satisfied as to the existence of such conspiracy, you must then consider whether or not the overt act charged in said First Count of said indictment has been proved beyond reasonable doubt. Such overt act must be proved as laid in this indictment, that is, that on or about the 4th day of October, 1922, the said defendants Joseph Fredericks and Clarence Chambers, and each of them, from a foreign country, to wit, British Columbia, in the Dominion of Canada, did wilfully, knowingly and unlawfully carry and transport [145] in and on said gas boat known as the 'Dragon' to a place near Stanwood, Washing-

ton, the intoxicating liquors described in said indictment for the purpose of selling, bartering, exchanging, giving away, furnishing and otherwise disposing of said liquors in violation of the National Prohibition Act. And unless such overt act is proven as it is charged in the indictment and as I have stated it to you, the crime charged cannot be found by you to have been proved and you must return a verdict of not guilty as to each of the defendants on said Count I."

"I instruct you that if you should find from the evidence in this case, that the defendants received this liquor on board the gas boat 'Dragon' near Deception Pass, in the State of Washington, knowing it to be liquor, they would be guilty of a violation of the law, yet you could not convict either one of these defendants upon either the first or second counts in this indictment, because to convict the defendants on the said counts, you must find beyond a reasonable doubt that they brought the liquor into the United States from British Columbia."

"Even though the evidence should convince you that each of the defendants acts illegally and maliciously, still unless you are further convinced beyond all reasonable doubt that such acts were done pursuant to a mutual agreement and understanding, you must return a verdict of not guilty as to each of the defendants on Count I."

Whereupon at 3:38 o'clock P. M. on the 21st day of February, 1923, the jury retired to deliberate upon its verdict.

Thereafter at 12 o'clock P. M. on the same day, the jury reached a verdict and sealed it and the next day being a holiday, on the morning of the 23d day of February, 1923, the said jury returned into court and rendered their verdict finding the defendants Joseph Fredericks and Clarence Chambers guilty on Counts I, III and IV and not guilty on Count II.

Thereafter each of the said defendants severally filed their written motions now on file herein praying that the verdict of the jury be set aside and a new trial granted and also in arrest of judgment.

Thereafter on the 12th day of March, 1923, the said motions and each of them came on for hearing before the Court and were argued by counsel for the said defendants, and the Court not desiring to hear from the counsel for the Government, at the conclusion of the arguments of counsel for the defendants orally [146] rendered the following opinion:

In the United States District Court, Western District, Northern Division, State of Washington.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH FREDERICKS et al.,

Defendants.

Decision on Motion for New Trial and Motion for Arrest of Judgment.

The COURT.—As to this indictment, of course, this is not such an indictment as you would draw, Mr. McDonald, or, Mr. Emory, perhaps. But, we do not read this overt act the same. You interpolate something,—must interpolate something into this language which is not there, at the opening of the statement with relation to overt acts. Now, it starts in and says: "and in order to effect the object of said conspiracy, the said conspirators," so-and-so, "and each of them, to wit,"—that is simply a recitation. That is a part of the thing that they were going to do; conspiring to bring it in from there, but, it has no connection with any overt act yet. Then, here it commences: "On the 4th day of October, 1922, did wilfully and unlawfully carry and transport in a certain gas boat known as the 'Dragon' to a place near Stanwood." It doesn't say, "from British Columbia." It just commences with the word "on" there. That is where the overt act commences. The other is simply a statement with relation to the conspiracy; but, the overt act commences from "transport in a gas boat 2628 bottles containing whiskey." So, that is the overt act, and that was what the testimony was, and that is what the Court told the jury. Now then, in defining [147] to the jury the general term of conspiracy, so that the jury might be advised, the Court, perhaps, used more

language than was necessary, in order to impress upon them what conspiracy was, and when the conspiracy really was a crime. Then, as you read there, the Court did say, "Now the *over* act charged in this indictment is this":

Mr. McDONALD.—Your Honor used the word "acts."

The COURT.—That is what you read there—defined the overt act and then stated exactly what it was, and then, they must find that. If they do not find that, of course, no offense is committed. And, with relation to the conspiracy, I think that the definition given by the Court of the term "conspiracy," while it might have been stated in less language and more concisely stated, and some language was employed that might as well have been eliminated; yet, I do not think that the language employed in any way affected or could affect any conclusion to be arrived at upon the issue which is submitted.

None of the cases which have been cited have any relation to the issues here; are not conclusive, and do not throw any light upon this, and this is in harmony with all of the decisions as I understand them. Take the Ault case: There the issue was fully stated in the indictment, and there was not any conspiracy there to do a thing, because, in what already had been set out, even the proof would not have added anything to it, even with all the facts set out by the Court, and the indictment wasn't good; and, I think the holding in that case was right.

Now, with relation to the objections urged,—error urged as to the Court in regard to the impaneling of the jury: now, I think that there is no possible error that could be predicated upon anything that was said or done. The object in impaneling the jury is to ascertain the condition of the minds of [148] the jury with relation to the particular issue to be presented as to any preconceived notions with relation to the issue, any prejudices, or anything with relation to that. It is not to place before the jury a hypothetical question and then ask the jurors what they would do if such a condition were established either one way or the other. That is not the idea. It is not to place the jurors on trial and see what the jurors would do in the effect a certain condition were established; but, what is the condition of the minds of the jurors at the instant with relation to the issue, as to any opinions, preconceived notions, or prejudices; and, that is the only purpose of the inquiry of the jurors; and, as to the general questions to be propounded to all of the jurors, when they have application to all of the jurors, it can be done just as well in one question as in twelve. It always seems to me a farce to ask one juror a question and then go to work and ask the next one the same question, and the next one the same, and continue for twelve jurors, when the same one question could be asked at the same time of all of the jurors. These jurors are intelligent men, and they would respond to one question propounded to all just as readily as to

individual inquiries to individual jurors upon the same general questions.

The motion for the new trial will be denied, and that will be the order, and, exception may be noted.

Mr. McDONALD. — Yes, note an exception. Your Honor, I don't want to argue with the Court; but, your Honor's opinion here suggested an angle to this that is new to me.

The COURT.—How is that?

Mr. McDONALD.—I say, your Honor, in your decision has indicated a view that I had not had before. I did not understand, really, your Honor's position before. But, would your Honor permit me one question, and that is, as I understand, your Honor holds your [149] language there indicated relates to the object of the conspiracy? Now, it seems to me, on either horn of the dilemma, if your Honor please, that there is a failure to prove that there was any conspiracy to import liquor.

The COURT.—Oh, no, simply a recitation referring to the other part of the indictment. I understand your position fully, and I think that the matter was fairly submitted to the jury, and an exception will be noted.

Mr. McDONALD.—Yes. I didn't want to quarrel with the Court; but I just wondered if your Honor had thought of that.

The COURT.—Oh, yes.

Mr. McDONALD.—And, there is a motion for arrest of judgment.

The COURT.—I presume that is upon the same grounds practically?

Mr. McDONALD.—Yes.

The COURT.—Then, the motion for arrest of judgment will be denied; exception allowed. . . . The case will be put over one week to sue out a writ of error, and judgment and sentence pronounced at that time.

And, now in furtherance of justice, and that right may be done, and, inasmuch as the foregoing facts do not appear fully of record, the said defendants Joseph Fredericks and Clarence Chambers, tender and present to the Court the foregoing as their bill of exceptions in the above-entitled cause, and pray that the same may be settled and allowed and signed and sealed by the Court and made a part of the record in this case by separate order and document.

CARKEEK, McDONALD, HARRIS & CORYELL,

JOHN F. DORE,

Attorneys for Defendants. [150]

Service of copy hereof hereby acknowledged this 22d day of March, 1923.

DE WOLFE EMORY,

Special Assistant United States Attorney.

[Indorsed]: Lodged in the United States District Court, Western District of Washington, Northern Division. Mar. 22, 1923, and Filed April 12, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [151]

United States District Court, Western District of Washington, Northern Division.

No. 7153.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH FREDERICKS, *alias* JOSEPH WATSON and CLARENCE CHAMBERS,

Defendants.

Order Settling Bill of Exceptions.

Now, on this 12th day of April, 1923, the defendants Joseph Fredericks and Clarence Chambers having tendered and presented the foregoing as their bill of exceptions in this cause to the action of the Court, and in furtherance of justice and that right may be done them, and having prayed that the same may be settled and allowed, authenticated, signed and sealed by the Court and made a part of the record herein; and the Court having considered said bill of exceptions and no objections or proposed amendments thereto are offered or proposed by the Government, and being now fully advised, does now in furtherance of justice and that right may be done the defendants, SIGN, SEAL, SETTLE and ALLOW said bill of exceptions as the true bill of exceptions in this cause, and does ORDER that the same be made a part of the record herein.

The Court further certifies that each and all of the exceptions taken by defendants, as shown in

said bill of exceptions, were at the time the same were taken allowed by the Court.

The Court further certifies that said bill of exceptions contains all the material facts, matters, things, evidence [152] and exceptions thereto material to each and every assignment of error made by the defendants and tendered and filed in court in this cause with said bill of exceptions.

The Court further certifies that said bill of exceptions was filed and presented to the Court within the time provided by law as extended by the orders of the Court heretofore made herein.

The Court further certifies that the instructions set forth in said bill of exceptions were given by the Court over the objection of the defendants noted in this bill of exceptions and that no other instruction was given by the Court upon the subject matter contained in said instructions, and that the said bill of exceptions contains all exceptions taken by the said defendants to said instructions and the said portions thereof.

IT IS FURTHER ORDERED that the clerk of this Court transmit this said bill of exceptions to the Honorable Circuit Court of Appeals for the Ninth Circuit.

Done and ordered in open court, counsel for the Government and defendants being now present, this 12th day of April, 1923.

JEREMIAH NETERER,
United States District Judge.

[Indorsed] Filed in the United States District Court, Western District of Washington, Northern

Division. Apr. 12, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [153]

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 7153.

JOSEPH FREDERICKS and CLARENCE CHAMBERS,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Order Extending Time to and Including May 19, 1923, to File Record and Docket Cause.

Now, upon this 10th day of April, 1923, comes on to be heard the motion of the defendants, for an order extending the time to file the transcript of the record herein, the said defendants appearing through their counsel, and the United States of America appearing through its counsel and consenting to such order, and for good cause now shown,

IT IS THEREFORE HEREBY ORDERED, That the time heretofore allowed in which to file the transcript of the record herein in the United States Circuit Court of Appeals for the Ninth Circuit, be and the same hereby is extended for thirty days from the 19th day of April, 1923, or to and including the 19th day of May, 1923.

Done in open court this 10th day of April, 1923.

EDWARD E. CUSHMAN,
U. S. District Judge.

We consent to the entry of the above order.

THOS. P. REVELLE,
DE WOLFE EMORY,
Attorneys for Defendant in Error.

Received a copy of the within order this 10th day of April, 1923.

THOS. P. REVELLE,
U. S. Atty.,
Attorney for Plaintiff.
F. M. S. [154]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 7153.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOSEPH FREDERICKS, *alias* JOSEPH WATSON, and CLARENCE CHAMBERS,
Defendants.

Praecipe for Transcript of Record.

To the Clerk of the Above-entitled Court:

You will please prepare a transcript of record on appeal to the Circuit Court of Appeals of the Ninth Circuit in the above-entitled cause, and include therein the following:

1. Indictment.
2. Arraignment of defendants.
3. Motion to quash and for return of property.

4. Demurrer.
5. Pleas of defendants.
6. Record of trial and impanelling jury.
7. Verdict.
8. Motion for new trial.
9. Motion in arrest of judgment.
10. Judgment and sentence.
11. Petition for writ of error.
15. Order allowing writ of error and fixing amount of bonds.
16. Assignment of errors.
17. Appeal and bail bond of each defendant.
18. Bill of exceptions.
19. Order settling bill of exceptions.
20. Writ of error.
21. Citation.
22. Defendants' praecipe.
23. Order extending time to file record.

CARKEEK, McDONALD, HARRIS & CORYELL,

Attorneys for Defendants. [155]

Service of the above admitted this 12th day of April, 1923.

DE WOLFE EMORY,

Special Assistant United States Attorney.

We waive the provisions of the act approved February 13, 1911, and direct that you forward typewritten transcript to the Circuit Court of Appeals for printing as provided under Rule 105 of this Court.

CARKEEK, McDONALD, HARRIS & CORYELL,

Attorneys for Defendants.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Apr. 12, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [156]

In the United States District Court for the Western District of Washington, Northern Division.

No. 7153.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH FREDERICKS and CLARENCE CHAMBERS,

Defendants.

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 156, inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause, as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the

record on return to writ of error herein, from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the plaintiff in error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [157]

Clerk's fees (Sec. 828, R. S. U. S.) for making record, certificate or return, 444 folios at 15¢	$66.60
Certificate of Clerk to transcript of record, 4 folios at 15¢	.60
Seal to said certificate	.20

I hereby certify that the above cost for preparing and certifying record, amounting to $67.40, has been paid to me by attorneys for plaintiffs in error.

I further certify that I hereto attach and herewith transmit the original writ of error and original citation issued in this cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 26th day of April, 1923.

[Seal] F. M. HARSHBERGER,
Clerk United States District Court, Western District of Washington. [158]

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 7153.

JOSEPH FREDERICKS and CLARENCE CHAMBERS,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Writ of Error.

The United States of America,
Ninth Judicial Circuit,—ss.

THE PRESIDENT OF THE UNITED STATES OF AMERICA, To the Honorable Judge of the District Court of the United States for the Western District of Washington, Northern Division, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment and sentence, of a plea which is in the said District Court before the Honorable Jeremiah Neterer, one of you, between Joseph Fredericks and Clarence Chambers, the plaintiffs in error, and the United States of America, the defendant in error, a manifest error hath happened to the prejudice and great damage of the said plaintiffs in error, as by their complaint and petition herein appears, and we being willing that error, if any hath been, should be duly corrected

and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, State of California. where said court is sitting, together with this writ, so that you have the same at [159] the said city of San Francisco within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held, that the record and proceedings aforesaid being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States of America, this 19th day of March, 1923.

[Seal] F. M. HARSHBERGER,
Clerk of the United States District Court for the Western District of Washington, Northern Division.

Allowed this 19th day of March, 1923, after plaintiffs in error had filed with the Clerk of this Court with their petition for a writ of error, their assignment of errors.

JEREMIAH NETERER,
Judge of the District Court of the United States for the Western District of Washington, Northern Division.

Filed in the United States District Court, Western District of Washington, Northern Division. Mar. 19, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [160]

In the United States Circuit Court of Appeals. for the Ninth Circuit.

No. 7153.

JOSEPH FREDERICKS, *alias* JOSEPH WATSON, and CLARENCE CHAMBERS,
Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

Citation on Writ of Error.

United States of America,
Ninth Judicial Circuit,—ss.

THE PRESIDENT OF THE UNITED STATES OF AMERICA, to the United States of America and to THOMAS P. REVELLE, United States Attorney for the Western District of Washington, GREETING:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, State of California, within thirty (30) days from the date hereof, pursuant to a writ of error filed in the Clerk's office

of the District Court of the United States for the Western District of Washington, Northern Division, wherein the said Joseph Fredericks and Clarence Chambers are plaintiffs in error, and the United States of America is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf. [161]

WITNESS the Honorable JEREMIAH NETERER, Judge of the United States District Court for the Western District of Washington, Northern Division, this 19th day of March, A. D. 1923.

[Seal] JEREMIAH NETERER,
Judge.

Service of the within and above citation and receipt of a copy thereof is hereby admitted this 19th day of March, A. D. 1923.

DE WOLFE EMORY,
Special Assistant United States Attorney.

Filed in the United States District Court, Western District of Washington, Northern Division. Mar. 19, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [162]

[Endorsed]: No. 4023. United States Circuit Court of Appeals for the Ninth Circuit. Joseph Fredericks and Clarence Chambers, Plaintiffs in

Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Received April 30, 1923.

F. D. MONCKTON,
Clerk.

Filed May 7, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.